UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/40
24 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 9 of the agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in Afghanistan submitted by Mr. Kamal Hossain, Special Rapporteur in accordance with Commission on Human Rights resolution 1998/70

GE.99-11654 (E)

Introduction

1. A Special Rapporteur was first appointed to examine the human rights situation in Afghanistan in 1984 (Economic and Social Council resolution 1984/37 of 24 May 1984). Since then the mandate has been renewed regularly. Mr. Felix Ermacora served as Special Rapporteur for Afghanistan from 1984 until his death in 1995. Mr. Choong-Hyun Paik was appointed in April 1995 and his mandate was renewed in 1996 and 1997. However, he resigned towards the end of 1998.

2. Before his resignation, Mr. Paik submitted to the Commission on Human Rights a report (E/CN.4/1998/71 of 12 March 1998) referred to below as the 1998 report. An interim report (memorandum) prepared by him was transmitted to the General Assembly with a note by the Secretary-General (A/53/539 of 26 October 1998), referred to below as the 1998 interim report.

3. The present Special Rapporteur was appointed by the Commission on Human Rights in December 1998. He received some of the background documentary material in New York in January 1999 and indicated the need urgently to schedule a visit to Afghanistan in order to be able to submit his report to the Commission at its next session. He visited Geneva in the first week of February 1999 and had the benefit of background briefing in the Office of the United Nations High Commissioner for Human Rights (OHCHR). He met the High Commissioner and other senior officials. He also met the United Nations High Commissioner for Refugees and senior officials of UNHCHR.

4. The visit to Afghanistan remained subject to a security assessment being conducted by the United Nations following the withdrawal of all international United Nations agency personnel from Afghanistan after a United Nations Special Mission to Afghanistan (UNSMA) official was killed in 1998. The return of United Nations personnel was to take place when "the security situation proved conducive to their return". The Special Rapporteur scheduled a visit for mid-February 1999 but was advised to defer his visit for a few weeks. Ultimately, he visited Afghanistan from 16 to 18 March 1999. He was in Islamabad on 15, 16, 19 and 20 March and in Peshawar on 18 and 19 March 1999.

5. In Kabul, the Special Rapporteur held meetings with the Deputy Minister for Foreign Affairs, the Deputy Minister of Health, the Minister for the Promotion of Virtue and Prevention of Vice and senior officials of the respective ministries. He had a round-table meeting with representatives of United Nations agencies. He also met representatives of NGOs and a cross-section of citizens. The Special Rapporteur visited the Maiwand Hospital and went to different parts of the city and saw the devastation caused by the protracted armed conflict.

6. In Islamabad, the Special Rapporteur had meetings with the Minister for Foreign Affairs of Pakistan and senior officials of the Ministry of Foreign Affairs, with United Nations officials and NGO representatives engaged in humanitarian assistance operations in Afghanistan. In Peshawar, he met a cross-section of Afghan refugees - men and women - representatives of NGOs and United Nations agencies and government officials.

7. The Special Rapporteur, in these circumstances, was presented with an impossible time constraint in preparing a report which he was advised had to be submitted by 22 March 1999. Given significant developments which had taken place since the submission of the 1998 report by his predecessor, the Special Rapporteur felt it was important for him to submit a written report, even if only in an abridged form, in order to review the impact of those developments on the human rights situation in Afghanistan. The present report, therefore, highlights the key facts and issues, which could subsequently be elaborated upon in a detailed report to the United Nations General Assembly. In view of the time required for translation and circulation, the Special Rapporteur was requested to limit the present report to around 12 pages.

8. The Special Rapporteur wishes to express his sincere appreciation to the authorities of Afghanistan and the Government of Pakistan for having extended full cooperation and to officials of the United Nations and its agencies, and to NGO representatives whom he met in connection with his mandate. He would, in particular, like to thank the United Nations Coordinator for Afghanistan and the staff of the Office for the Coordination of Humanitarian Affairs (OCHA) of the United Nations in Islamabad and Kabul for their invaluable assistance, without which it would have been impossible for the Special Rapporteur to carry out his mission.

I. OUTLINE OF EVENTS RELATING TO THE POLITICAL SITUATION IN AFGHANISTAN SINCE THE SUBMISSION OF THE 1998 REPORT

9. The period under review (1 September 1998-20 March 1999) witnessed the continuation of the armed conflict. Its major features are reviewed in the United Nations Secretary-General's report on the situation in Afghanistan of 23 November 1998 (A/53/695-S/1998/1109) and in related documents.

10. After taking control of Mazar-I-Sharif on 8 August 1998, the Taliban went on to capture Bamyan on 13 September 1998, completing their sweep of northern Afghanistan, with the exception of a few provinces in the north-east. As the Taliban advances continued in northern Afghanistan, tension between the Taliban and the Islamic Republic of Iran began to mount along the Iranian-Afghan border. The situation deteriorated sharply after it was acknowledged on 10 September 1998 that, in the course of the military operations carried out by the Taliban in Mazar-I-Sharif, eight Iranian diplomats and one journalist were killed on the premises of the Iranian Consulate General. After conducting initial military exercises on the border, involving some 70,000 troops, in early September, the Islamic Republic of Iran announced on 12 September 1998 that it would conduct military manoeuvres involving an additional 200,000 troops. To counter this, the Taliban moved some 10,000 fighters to the border areas from other front lines.

11. In spite of this development along the Iranian-Afghan border, the Taliban engaged in operations to take over the remaining areas controlled by forces of the United Front (UF) in the north. However, their multi-pronged offensive against the forces of Ahmad Shah Massoud of the UF did not succeed. On 17 October 1998, the UF forces re-entered Taloqan, the capital of Takhar province, which had fallen to the Taliban in August.

12. In his report, the Secretary-General went on to record:

> "Throughout the period, there had been many allegations as well as credible reports of external, mostly covert interference for both sides of the war. One of the stark examples of such outside intervention was the recent interception by the Kyrghyz authorities of a full train load of weapons and ammunition said to be destined for UF factions. Also, sources reported to UNSMA on sorties of unmarked aircraft to UF air bases and heavy military supplies ferried across the Oxus River to reinforce Massoud forces. The Taliban were in no way immune to similar allegations. There have been persistent reports of massive amounts of support, in terms of military equipment, know-how and funds, that their militia has allegedly received from outside sources." (A/33/695-S/1998/1109, para. 10).

13. In the context of these developments, the Secretary-General's Special Envoy for Afghanistan, Mr. Lakhdar Brahimi, has been engaged in consultations with all the Afghan factions and leaders of the Governments and authorities concerned. He undertook missions in September and October 1998 and in February and March 1999 on a range of issues extending from the allegations of massacres in 1997 and 1998, to the flare-up of fighting in northern Afghanistan and the tension between Iran and the Taliban. The core issue in these consultations, however, has been to work out a process and develop a framework for achieving lasting peace in Afghanistan.

14. These consultations led to the initiation of talks in Ashkabad on 14 March 1999 between representatives of the Taliban and the UF. Kabul Radio reported on 15 March 1999 that the Taliban and the UF had accepted a two-point peace accord that called for a cease-fire and for talks on a power-sharing formula. On 14 March 1999, the spokesmen for the two sides had told reporters that they had agreed to share power and to work for a permanent cease-fire. The Taliban spokesman had stated that they had agreed on the main principles of forming "a unified and widely representative government" and had spoken of establishing "a shared legislature, shared executive and shared judiciary". The next round of talks is expected to be held shortly.

15. These developments raised issues touching upon the operations of the United Nations in three major areas: (a) humanitarian assistance operations, (b) its responsibility in relation to the protection of human rights and (c) its role in securing the resolution of the armed conflict and in achieving lasting peace.

II. GENERAL OBSERVATIONS ON THE IMPACT OF THE SOCIAL, ECONOMIC AND POLITICAL FACTORS ON THE HUMAN RIGHTS SITUATION

16. The overall situation at the end of 1998 was characterized by continuing armed conflict, the political crisis resulting from lack of agreement on the framework for durable peace, the continuing violations and denial of human rights and the deteriorating humanitarian situation, affected by the absence of international personnel of the United Nations agencies as well as others engaged in humanitarian work, and the reduction of resource flows.

17. A daunting challenge is presented by the economic and social, and by the political realities on the ground. The economic and social factors include: widespread loss of human life, destruction of social and economic infrastructure, environmental degradation, food insecurity and malnutrition - with the additional losses caused by the floods and earthquakes which struck south-western and north-eastern Afghanistan in 1998 - high levels of unemployment and poverty, and further increases in illicit drug production. These factors are reflected in some of the critical socio-economic indicators summarized below:

Food consumption per capita is still lower than before the war;

Chronic malnutrition exists in most parts of Afghanistan;

Hardly any girls and only 24 per cent of boys attend school;

Over 3 million refugees still live outside Afghanistan;

Over 2 million people are internally displaced;

Over 700 square kilometers are known to be contaminated with landmines and unexploded ordnance;

The infant and maternal mortality rates are among the highest in the world;

One million houses need rebuilding;

Only five per cent of the rural population have access to safe water;

In most of the country, women suffer deprivation due to widespread poverty, low literacy levels, limited opportunities to participate in public life, limited availability of health care facilities and restrictions on the employment of women in urban areas;

The country has acquired the dubious distinction of being the world's largest producer of narcotic substances.

18. The present political context is defined by a lull in the fighting as possibilities of a transition towards a negotiated peace are explored. The Taliban authorities made significant military gains in August 1998. While they seek international recognition, they continue to pursue policies which are in conflict with international human rights standards by which Afghanistan is bound as a party to the major international human rights instruments. These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Prevention and Punishment of the Crime of Genocide. It has also signed the Convention on the Elimination of All Forms of Discrimination against Women.

19. The Afghan people have suffered gross violations of their human rights during 20 years of armed conflict, which was triggered by the invasion of Afghanistan by foreign troops. The Geneva Accords, signed in 1988, envisaged that with the withdrawal of foreign troops (completed in 1989) the conditions would be created that would enable Afghan refugees to return voluntarily to their country. Non-interference in the internal affairs of Afghanistan and non-intervention were to be internationally guaranteed and the United Nations was entrusted with a monitoring role in relation to the interrelated set of obligations created by the Accords. It was expected that the human rights of the Afghan people would thus be safeguarded. This legitimate expectation remains unfulfilled to date.

20. The 1998 report and the 1998 interim report (memorandum) of the previous Special Rapporteur referred to alleged massacres and summary executions, to outbursts of ethnic violence and other violations of human rights ranging from the infliction of inhuman and degrading punishment to systematic gender discrimination, including denial to women of access to medical care and employment. The draft memorandum was sent to the Taliban representatives who by their note verbale of 21 October 1998 contested these allegations, stating that they had not been verified and that no mention had been made of cases in which, according to them, "thousands of unarmed and peace-demanding Taliban were tortured". Their response concluded with an appeal "to humanitarians of the world to please heal the wounds of the Afghans".

21. The healing of the wounds of the Afghan people requires an end to human rights violations. Such healing must embrace all Afghans, regardless of ethnicity, religion and gender. During his visit to Kabul, the Special Rapporteur observed some relaxation of the restrictions imposed on the rights of women, as a few women doctors and nurses were seen at work in a hospital attending to female patients. A more flexible attitude was expressed by Taliban representatives with regard to the access of girls to education, and a recent edict granted exemption to needy widows from the restriction against the employment of women in urban areas. It was urged that it was imperative to maintain and enhance humanitarian assistance not only to meet basic human needs and thus to uphold the right to life of millions of suffering Afghans, but also to provide incentives for ending or significantly relaxing the existing restrictions which were violative of human rights. A more comprehensive assessment would be possible through further visits by the Special Rapporteur and would be helped by visits of the thematic Special Rapporteurs on extrajudicial, summary or arbitrary executions, on torture and on violence against women. The United Nations investigation into the massacres may also provide material which would be useful for an overall assessment.

22. The Strategic Framework statement of September 1998 relating to United Nations operations in Afghanistan describes the complex reality of that country thus: "It mixes a volatile and violent political crisis, a human rights and humanitarian emergency, and two decades of missed development opportunities. The fragmentation of the country and the collapse of practically all institutions of the State, also constitute `an emergency of governance'". The declared purpose of the Strategic Framework, namely to enhance the synergy between the political objective of building peace and international assistance activities, and promoting greater effectiveness and

coherence of such activities requires a positive and flexible approach and enhancement of resources for humanitarian assistance, not a negative and rigid approach or the reduction of the resources committed to humanitarian assistance.

23. In its resolution 1193 (1998) of 28 August 1998, the Security Council identified a further relevant factor when it noted the fact that despite repeated pleas by the Security Council, the General Assembly and the Secretary-General to halt foreign interference in Afghanistan, including the involvement of foreign military personnel and the supply of arms and ammunition to all parties in the conflict, such interference continued unabated.

24. The unceasing flow of arms to all sides in the conflict has been recognized as a critical factor which contributes to the persistence of human rights abuses by subjecting men, women and children to the arbitrary rule of those who use those arms and by making people virtual hostages in their own land. Apprehensions have been expressed that the onset of spring may see the resumption of conflict in a number of areas in Afghanistan, as it has been reported that there are visible signs of fresh military supplies being received by all sides. This would expose the local civilian population to gross violations of human rights, ranging from revenge killing to starvation from blockades.

25. The United Nations has recognized the central importance of human rights in a strategy of peace building through a transition process leading to the formation of "a representative transitional government of national unity". The objectives of that policy are stated to be:

To achieve a cessation of hostilities;

To seek a regional political consensus in support of the peace process;

To seek direct negotiations between all parties on a political settlement.

26. It was expressly acknowledged that the strategy is based upon the following assumptions: "that Afghanistan's neighbours need peace as much as it does - the war in Afghanistan has had profound implications for its neighbouring countries; that no peace is possible in Afghanistan unless all arms and ammunition supply to the warring factions is stopped; that an embargo on arms can only succeed if the neighbouring countries actively assist in enforcing it; that no single faction, at the present time, can govern the totality of Afghan territory by itself and a government of national unity, composed of the different factions, is therefore needed; and, finally, that all factions must make significant progress in the area of human rights, particularly the treatment of women and minority ethnic groups, in order to attain sustainable peace, international recognition and full-scale resumption of reconstruction and developmental assistance".

27. The Security Council endorsed this strategy in its resolution 1214 (1998) of 8 December 1998 by reiterating its call upon

all States to take resolute measures to prohibit their military personnel from planning and participating in military operations in Afghanistan and immediately to end the supply of arms and ammunitions to all parties to the conflict, and by demanding that all Afghan factions put an end to discrimination against girls and women and other violations of human rights as well as violations of international humanitarian law, and adhere to international norms and standards in this sphere.

III. AN OVERALL STRATEGY FOR UPHOLDING AND IMPLEMENTING HUMAN RIGHTS IN AFGHANISTAN

28. These realities call for an overall strategy to uphold and implement human rights in Afghanistan. It is in recognition of this need that the United Nations has been engaged in a comprehensive review of its operations and is taking steps to strengthen mechanisms for coordination.

29. In relation to UNSMA and all United Nations funds and programmes, in particular OCHA, the Secretary-General is committed to strengthening such coordination in the context of the Strategic Framework. In pursuance of this commitment, a special civil affairs unit, initially composed of 12 monitors, will be deployed in major cities in Afghanistan, security conditions permitting. The exact location and functioning of this unit is to be determined following the assessment mission that is expected to visit Afghanistan in April 1999. The primary objective of the unit will be to promote respect for human rights and compliance with minimum humanitarian standards, and to deter massive and systematic violations of human rights in the future. This will need to be supplemented by closer monitoring of conditions in areas inhabited by large concentrations of Afghan refugees, as reports have been received of cases of forced repatriation, threats to life and closure of educational and health facilities servicing refugees.

30. These developments present an opportunity to adopt a bold and imaginative strategy which would enable the international community to meet the urgent humanitarian needs of the people of Afghanistan while firmly adhering to the commitment to establish a framework for durable peace based on a realization of the human rights of all Afghans.

31. The core elements of that strategy should consist of the following:

(i) A process must be nurtured and facilitated by the United Nations which would involve all segments of the Afghan population and enable them to participate in the working out of the framework and basis for lasting peace in Afghanistan.

(ii) The process initiated in Ashkabad and the efforts of the Six plus Two Group of States must be sustained in order to continue meaningful consultations with all segments of the Afghan people in all parts of Afghanistan and those displaced outside the country.

(iii) The basic elements which should form part of the framework to be developed should include: (a) recognition of the right to choose freely a broad-based, multi-ethnic and fully representative government consisting of representatives of all segments of the

Afghan people; (b) an inclusive participatory process would involve continuing consultations to spell out each phase of the transition and clearly formulated steps to be taken in each phase; (c) while this transition was being affected within the agreed framework, the international community would use its resources to support the transition process and in particular commit itself to the actions identified in (iv) below.

(iv) The human-rights based process of transition should be pursued through: (a) promoting an inclusive, participatory process which would enable constructive dialogue to be held with all participants on the effective implementation of human rights; (b) a human rights programme for Afghanistan should focus initially on advocacy and dissemination of the entire range of human rights issues (economic, social and cultural rights as well as civil and political rights); (c) a practical and workable policy should be adopted on discrimination against women and girls, as should a set of standards and benchmarks against which progress and compliance may be measured; (d) the Secretary-General should ensure that all United Nations activities in Afghanistan are carried out taking into account the principle of non-discrimination against women and girls, and that a gender perspective and special attention to the human rights of women and girls, are fully incorporated in the work of the civil affairs unit of UNSMA, including the training and selection of staff.

(v) All parties to the Afghan conflict should be urged publicly to reaffirm that they are committed to safeguarding internationally recognized human rights and to take measures to prevent human rights abuses, such as deliberate and arbitrary killings, torture including rape, abduction of people for ransom or on grounds of their ethnic identity, religion or political opinions. Such measures would include accepting independent and impartial procedures for investigating reports of human rights abuses and breaches of humanitarian law. The results of such investigations should be given to institutions involved in monitoring the human rights situation in Afghanistan, including the Special Rapporteur.

32. Steps aimed at achieving greater coordination in the pursuit of clearly defined objectives should enable the United Nations more effectively to play its critical role in orchestrating the efforts for a negotiated peace and at the same time in maintaining life-saving humanitarian assistance programmes. It must, however, be underscored that the programme for building a lasting peace must give due place to the progressive realization of the human rights of all the Afghan people - the men, women and children of Afghanistan.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/41
25 January 1999

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the human rights situation in the Republic of Equatorial Guinea submitted by Mr. Alejandro Artucio, Special Rapporteur of the Commission, pursuant to Commission resolution 1998/71

GE.99-10405 (E)

CONTENTS

	Paragraphs	Page
Introduction	1 - 4	3
I. IN SITU ACTIVITIES	5 - 14	3
II. LEGISLATIVE ACTION	15	6
III. SITUATION OF CIVIL AND POLITICAL RIGHTS	16 - 44	7
A. Opinion of the Government	16	7
B. Activities of the political parties and compliance with the 1993 and 1997 agreements	17 - 19	7
C. Freedom of movement	20	8
D. Freedom of the press	21 - 22	9
E. Violations of the right to information	23	9
F. Rights to integrity, security and freedom of the person - Events after 21 January 1998	24 - 34	10
G. Other political arrests	35 - 37	12
H. Prisons of Malabo and Bata	38 - 41	13
I. Other persons deprived of their liberty	42 - 44	14
IV. SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS	45 - 59	15
A. Economic and social situation	45 - 47	15
B. Health	48	16
C. Status of women	49 - 56	16
D. Ethnic diversity and conflict	57 - 59	18
V. CONCLUSIONS	60 - 62	18
VI. RECOMMENDATIONS	63	19

Introduction

1. The situation of human rights in the Republic of Equatorial Guinea has been considered publicly by the Commission on Human Rights since 1979. At its forty-ninth session, in resolution 1993/69, the Commission requested its Chairman to appoint a special rapporteur of the Commission with a mandate to make a thorough study of violations of human rights by the Government of Equatorial Guinea; in 1993 the Chairman of the Commission appointed Mr. Alejandro Artucio as the Special Rapporteur.

2. Also in 1993, by agreement between the Centre for Human Rights and the United Nations Development Programme (UNDP), Mr. Eduardo Luis Duhalde Hubert was appointed as the Human Rights Consultant in Equatorial Guinea for the purpose, inter alia, of assisting the Special Rapporteur in all respects, and in particular providing him with reliable and comprehensive information collected in situ on the human rights situation, and helping the Special Rapporteur to define, in agreement with the Government of Equatorial Guinea, the most appropriate legislative and institutional framework for ensuring an effective improvement in the human rights situation in that country.

3. At its fifty-fourth session, the Commission on Human Rights considered the fifth report of the Special Rapporteur (E/CN.4/1998/73 and Add.1) and on 21 April 1998 adopted resolution 1998/71 entitled "Situation of human rights in Equatorial Guinea and assistance in the field of human rights". The present report, submitted pursuant to that resolution, sets out the results of the Special Rapporteur's ninth mission to Equatorial Guinea, the purpose of which was both to verify the effective exercise of human rights in the country and the implementation of the various recommendations made by the Commission on Human Rights, and also to gather information about the progress of democratization.

4. The Special Rapporteur wishes to point out that this report makes various references to the report of the previous year (E/CN.4/1998/73 of 13 January 1998, and E/CN.4/1998/73/Add.1 of 1 April 1998), of which the observations remain valid.

I. IN SITU ACTIVITIES

5. The Special Rapporteur undertook his ninth mission to Equatorial Guinea from 1 to 12 December 1998. As on previous missions, he was accompanied by the Human Rights Consultant, Mr. Eduardo Luis Duhalde Hubert, who provided valuable support. During its visit, the mission was received by the following dignitaries: H.E. Miguel Oyono Ndong Mifumu, Deputy Prime Minister and Minister for Foreign Affairs and International Cooperation; H.E. Angel Esono Abaha, Minister of the Interior and Local Communities; H.E. Rubén Mayé Nsue Mangue, Minister of Justice and Worship; H.E. Melanio Ebendeng Nsomo, Minister in Charge of National Defence; H.E. Manuel Nguema Mba, Deputy Minister for National Security; and H.E. Margarita Alene Mba, Minister for Social Affairs and the Status of Women. His Excellency Mr. Obiang Nguema Mbasogo, the President of the Republic, was unable to receive the mission because he was out of the country at the time.

6. The meetings took place in an atmosphere of understanding and cordiality, and reviewed a number of situations in the country. The Special Rapporteur wishes to express his gratitude to the authorities of the Republic of Equatorial Guinea and to stress most especially that they provided all the necessary facilities for him to carry out his mission, enabling him to travel anywhere and talk to anyone he wished.

7. The mission travelled to the island of Bioko and made contact with the local authorities and members of civil and political society, particularly in the capital city of Malabo. In addition, it went to the mainland region, where in the city of Bata it spoke to the Governor and was also able to meet various personalities of civil society. It then travelled further inland for a working meeting with the peripheral authorities in Niefang that was attended by the deputy governor, the military commander, the police commissioner and the district judge. It had a constructive dialogue with these authorities on the question of enhancing respect for human rights. In the context of its activities, the mission made contact with all the opposition political forces and with the political parties forming part of the Government. It visited the public prisons and general police stations of Malabo and Bata, including the gendarmerie premises in the latter city, and was able to talk privately with the inmates.

8. Desiring likewise to obtain information about the human rights situation and the progress of democratization, the mission contacted the diplomatic representatives of the main aid donating countries accredited in Malabo, in particular Mr. Jacobo González de Arnau, the Ambassador of Spain; Mr. François Breton, the Ambassador of France; and Mr. Ignacio Sobrino, the representative of the European Union. It also contacted the representative offices of the organizations of the United Nations system, such as the World Health Organization (WHO), the United Nations Food and Agriculture Organization (FAO) and the United Nations Children's Fund (UNICEF). In addition, it remained in permanent contact with Ms. Sylvie Kinigi, the UNDP Resident Representative in Malabo, to whom it is grateful for her invaluable support.

9. The Special Rapporteur wishes at the outset to present some of the findings of his investigation:

(a) He notes a disturbing lack of progress towards democratization;

(b) With regard specifically to human rights, after the attempted rebellion of 21 January 1998 (see E/CN.4/1998/73/Add.1), there has been a setback with cases of violations of those rights affecting not only individual guarantees but also the institutional and social life of Equatorial Guinea;

(c) He feels bound to reiterate the concern expressed in Commission resolution 1998/71 over "the continuing existence of deficiencies and conditions that lead to violations and abuses of human rights, including cases of prolonged incommunicado detention". Torture also appears to be a very frequent practice during police interrogations;

(d) In order to overcome the difficulties, intensive technical assistance will be needed from the Office of the United Nations High Commissioner for Human Rights, including training courses, seminars and workshops, with a view to removing the major political, cultural and social obstacles to the consolidation of the democratic process and the effective exercise of human rights.

10. As the Special Rapporteur told the Commission on Human Rights in April 1998, what happened in January 1998 confirms the conviction expressed in his earlier reports regarding the precarious nature of the progress achieved in the observance of human rights and fundamental freedoms. Accordingly, he advised the Commission not to relax its monitoring of the situation, as any crisis might mean an immediate regression, depriving the population of all legal protection, and pose the risk of a return to practices that violate human rights, especially torture of detainees, arbitrary detention and limitations on the parties' political action.

11. This confirms the weakness of Equatorial Guinea's civil society and in general of its political parties, which do not seem to be sufficiently effective to consolidate the democratic advances or to prevent the regressions mentioned above. Reference should also be made to the low level of activity of the opposition political parties, which allows the national political stage to be occupied almost exclusively by the Government and its political supporters, to the detriment of a plural and democratic society. This situation militates against the possibility that the legislative elections originally scheduled for November 1998 and presumably to be held in 1999 will take place in a climate of full civil liberties and the effective exercise of political rights.

12. With regard to the above, there have not been sufficient efforts or effective measures by the Government to replace the authoritarian components of its system of organization with the elementary principles characteristic of any pluralist and democratic society, this being most apparent at the middle levels of the State and particularly in local administrations. The underdevelopment of civil society is due in large measure to the lack of institutions that would constitute a vigorous social network (professional and cultural associations, trade unions, etc.) and no steps have been taken by the Government to promote them. The circulation of press organs is not authorized, permission is not given for the functioning of new non-governmental human rights organizations, which have been waiting for years to be recognized, the movements of the population within the country are controlled by military checkpoints, there is oppressive supervision of all private activity and in practice political dissent is viewed almost as a crime, particularly by the peripheral authorities of the mainland region. The Special Rapporteur notes with concern the repeated comments of Equatorial Guinea's authorities describing international human rights law as something imposed from outside with "obscure designs".

13. Two main features which have also seen no change are the lack of independence in the administration of justice with respect to the political branch and the degree of impunity enjoyed by State officials regarding abuses of human rights and fundamental freedoms. This constitutes a serious hindrance to the enjoyment of those rights, as was reaffirmed in the Vienna

Declaration and Programme of Action (part II.E, paragraph 91). The problem of impunity was addresses in the agreements reached between the Government and the political parties and there is a formal commitment - set forth in presidential decrees - to impose administrative and judicial penalties on those found guilty of human rights violations. However, there are no records of this commitment having been put into effect. The Minister of the Interior and Local Communities indicated in this connection that various agents of the State - police and military personnel - had been punished for abuse of authority, but he did not act on the Special Rapporteur's request for copies of the decisions taken to be made available to him.

14. The expectations and good wishes expressed in the Special Rapporteur's previous report that gradual progress would continue to be made towards a substantial change in the prevailing situation have unfortunately not been realized, since no significant advances are apparent in structural terms. The international bodies that have recently undertaken ad hoc missions to Equatorial Guinea or have produced socio-economic studies of the country agree in their description of the situation and make very similar assessments. This was the case with the identification mission of the Commission of the European Union in an August 1998 report on human rights, the process of democratization, the rule of law and the electoral process in the Republic of Equatorial Guinea (this document is available for consultation in the files of the Office of the United Nations High Commissioner for Human Rights).

II. LEGISLATIVE ACTION

15. Notwithstanding the enormous difficulties caused by the failure to publicize legislation and the lack of cooperation from the authorities in this respect, the mission was able to note the enactment of the following laws in the course of 1998 (see also paragraph 23):

(a) Amnesty Law (No. 1/1998 of 14 January) which covers crimes up to 26 April 1997;

(b) Law amending the Law on the Right of Complaint and Petition (No. 2/1998 of 15 January);

(c) Law amending the Electoral Law (No. 3/1998 of 19 January), which has an "additional provision" that suspends, for the 1998 legislative elections, the possibility of creating political coalitions between the legalized parties, a right that was granted by article 48 of Law No. 3 of 12 January 1993;

(d) Law amending the Law on Meetings and Demonstrations (No. 4/1998 of 14 January);

(e) Law amending the Law on the Financing of Political Parties (No. 5/1998 of 19 January);

(f) Law amending the Law on Political Parties (No. 8/1998 of 26 January);

(g) Constitutional Law which amends article 4 of the Fundamental Law of the State, establishing that "the official languages of the Republic of Equatorial Guinea are Spanish and French. The aboriginal languages are recognized as integral parts of the national culture" (Constitutional Law No. 1/1998 of 21 January);

(h) Law on the Recognition and Functioning of Non-Governmental Organizations (passed in December 1998, text not yet made public);

(i) Law on the National Budget.

III. SITUATION OF CIVIL AND POLITICAL RIGHTS

A. Opinion of the Government

16. The Special Rapporteur extensively analysed the situation regarding the process of democratization and governability with the highest authorities. The latter told the mission that the Government of Equatorial Guinea regards itself as the target of an international campaign of insults and disparagement that is making it difficult for the State and society to function properly. They accused some of the opposition parties of being involved in the campaign, which is in their view based solely on false information. The high-ranking representatives interviewed denied the accusations made in turn by the opposition forces against the Government, explaining that they were fully implementing the Agreements of 26 April 1997 (see E/CN.4/1998/73, paragraphs 22-25). From what the Special Rapporteur was able to determine, it may be said that the Government of Equatorial Guinea has been complying with these agreements, although there has been a pronounced delay in their implementation, a matter which, as already stated, is most disturbing inasmuch as the measures agreed are of the greatest importance for achieving a climate of détente with sufficient safeguards before the legislative elections due to be held on a date not yet fixed in 1999.

B. Activities of the political parties and compliance with the 1993 and 1997 agreements

17. Insofar as his specific mission is concerned, the Special Rapporteur concentrated on verifying implementation of the recommendations made by the Commission on Human Rights in previous years, especially those contained in its latest resolution 1998/71, and observance of the agreements reached between the Government and the political parties (see E/CN.4/1998/73, paragraphs 22-25). To this end, the Special Rapporteur invited all the recognized parties, including the ruling party (Partido Democrático de Guinea Ecuatorial, PDGE), to an information meeting at the UNDP office in Malabo, a practice that has been customary since this Special Rapporteur's first visit to the country, as noted in each of his reports. The meeting brought together all the parties except for PDGE, which preferred not to attend.

18. All the opposition political parties interviewed unanimously complained of the Government's non-fulfilment of the April 1997 agreements and its lack of political will to implement them. They stated that a great opportunity to consolidate democracy in the country had been missed, and were sceptical about the transparency of the future legislative elections unless there was a change

in the Government's attitude. It will be recalled that the talks held between 10 February and 25 April 1997 had yielded the "Document on the Evaluation of the National Pact and Legislative Agreements", giving rise to great expectations of a decisive step forward in the process of democratization and in the conditions of governability of the country.

19. In this connection, the opposition political parties specified, orally and in written notes in the possession of the Special Rapporteur, that:

(a) Despite the issuance of the decrees forming part of the 1997 Agreements and some of the legislative amendments granted, most of these instruments have not been put into effect;

(b) The Supervisory and Monitoring Commission for the 1993 National Pact and the Supervisory and Monitoring Commission for the 1997 Agreements are inactive, except when their functioning is in the Government's interests;

(c) Restrictions on civil liberties continue to apply in the mainland region and it remains impossible to gain access throughout the country to the media (radio and television) upon which the Government relies;

(d) Their members are still being arbitrarily detained for short periods as a Government tactic to dissuade them from engaging in political activities, and their employees in the State administration are continuing to be dismissed as political opponents;

(e) The existence of physical barriers controlled by the military and the police hampers freedom of movement;

(f) Action has still not been taken on applications by new political parties for recognition in accordance with the law;

(g) Regarding the preparation and thorough review of the census of the electorate, the census-taking tasks which involved the political parties are being completed without their being able, as planned, to exercise the supervision called for in the Agreements with respect to the definitive voters' lists. In this connection, they expressed their concern about the possible inclusion or exclusion of citizens during the census;

(h) The Government has not honoured its undertaking to call legislative elections 60 days before the expiry of the term of office of the present legislature;

(i) The Government's declared intention to locate polling stations in military districts undermines the safeguard of the secret ballot and serves the purpose of keeping a watch on the actual casting of votes and inducing a public ballot by means of coercion.

C. Freedom of movement

20. Freedom of movement in Equatorial Guinea remains difficult because of the existence of barriers on roads in the interior, as can be attested by this mission, which had to wait patiently at such checkpoints for permission to

continue its journey. Decree No. 73 of 13 May 1997 prohibited the peripheral authorities from erecting barriers in the national territory so as not to obstruct the free movement of persons, goods and propaganda material for the political parties. The ban does not include barriers erected for national security or customs control purposes. The Special Rapporteur has received information that these barriers continue to cause regular incidents with members of the opposition parties, both in the mainland region of Río Muni and on the island of Bioko; the Government's argument is that they are necessary to protect national security.

D. Freedom of the press

21. The Press Association of Equatorial Guinea (ASOPGE), an NGO recognized by the authorities, submitted a report to the Special Rapporteur enumerating the applications not processed by the Government bodies to authorize the appearance of the following periodicals: El Tiempo (application of 11 July 1996); La Opinión (application of 22 April 1998); and La Hoja del Periodista, the organ of ASOPGE (application of 6 March 1998). It should be noted that the legislation in force is contained in Law No. 6/1997 of 30 May on the Press, Publishing and the Visual Media. This unduly casuistic text includes a statement of "publishing principles" which are open to subjective interpretation and whose violation gives rise to criminal, civil and administrative penalties. It also establishes a system of control over the media (registration which can be refused, prior lodging of copies, etc.) and a code of penalties. In short, this law could be used to condition the activities of the free press at the will of the Government.

22. A serious episode infringing the freedom of the press and contrary to the free dissemination of information occurred in early November 1998, when four members of the Convergencia para la Democracia Social (CPDS) party attempted to bring into Equatorial Guinea from Gabon 60 copies of a book published in Spain under the title "Equatorial Guinea at the crossroads". The incident, which is described in paragraph 37 of this report, ended with the detention of the four persons at the Bata police station in the Río Muni region.

E. Violations of the right to information

23. There is no regular publication of laws, decrees and governmental acts, which are not made known either to the citizens or to the spheres of public administration, especially the peripheral authorities - which take advantage of this lack of information to deny petitioners their lawful rights. The non-publication of laws, decrees and regulations (on a periodic or regular basis) is, as the Special Rapporteur has stated in his previous reports, a source of grave legal insecurity. It should be noted that, as on previous occasions, the mission found it difficult to obtain the texts of the laws and decrees issued in 1998, and only some of them were made available (see also paragraph 15).

F. Rights to integrity, security and freedom of the person - Events after 21 January 1998

1. The attacks of January 1998

24. As explained in his previous report to the Commission (E/CN.4/1998/73/Add.1), in which he set out the results of his eighth mission to the country (22-25 March 1998), various acts of violence of considerable gravity occurred on the island of Bioko in the early hours of 21 January 1998, when an armed group of civilians made successive attacks on the military posts of Moka and Lubá, and on the police checkpoint at Banapá, near Malabo, where a member of the police force was seriously wounded. In the case of Lubá, the armed action spread to the electric power service and the home of the Deputy Governor. As a result of these actions, three soldiers and three civilians were killed by the attackers.

25. A state of maximum alert was declared by the authorities and large numbers of soldiers were brought into the various towns and villages, arresting about 550 people. During the hunt for the rebels, the security forces killed two civilians, presumed members of the attacking commando - the young Gustavo Mulé, in the outskirts of Belebú village, and Marcos Manuel Rope Bitá in the environs of Rebola. According to evidence gathered by the mission in situ in March 1998, both young men were wounded when captured and the actual causes of their deaths are unknown. Later, another three civilians died after being detained and taken to the Malabo central police station. They were: the nurse Ildefonso Bocubo, who was tortured to death, according to his family; a young man from Belebú village, Irineo Barbosa, who had been in good health at the time of his detention, according to testimony gathered by the mission in the village where he was captured; and Carmelo Djeck Bohopa, arrested as he was leaving a church in the city of Malabo. No autopsy was performed to help ascertain the cause of death in any of the cases.

26. In the addendum to his previous report (E/CN.4/1998/73/Add.1, paragraph 11), the Special Rapporteur stressed that the rapid reaction of the President of the Republic and the Government calling for calm averted more serious problems which could have had major repercussions in view of the climate on the island of Bioko and the risk of a slide into ethnic conflict between the Fang and the Bubi segments of the population. The intervention of the Republic's highest authorities prevented the excesses from becoming more serious.

2. Repression that followed the attacks of 21 January 1998

27. After the above incidents, the places where they occurred, the villages where some of the attackers took refuge and others where there is known opposition to the Government from the Bubi ethnic group were immediately occupied by large numbers of soldiers and members of the security forces, accompanied by persons not in uniform. These contingents, which were pursuing the "rebels" and anyone helping or supporting them, occupied the villages for two weeks, entered houses without a search warrant, often breaking down doors and smashing windows, and harassed the civilian population, engaging in

looting, as well as taking money, goods and animals from the inhabitants, from whom sums of money were demanded in some cases under threat of arrest.

28. Of the 550 persons originally arrested, 110 were kept in prison, under investigation, the rest being released. To begin with, they were concentrated in the general police station and public prison of Malabo (known as "Black Beach") in conditions of complete lack of hygiene, overcrowding and inadequate food. Many of the prisoners were subjected to severe torture and beatings, showing physical signs of injury and ill-treatment (on their arms and legs). They were also held incommunicado for a long time, making it enormously difficult for the lawyers of many of the detainees, Mr. José Olé Obono and Mr. Fabián Nsue Nguema, to provide them with legal assistance.

29. The commandos who led the events of 21 January belonged entirely to the Bubi ethnic group. The Government immediately accused them of belonging to the Movimiento para la Autodeterminación de la Isla de Bioko (MAIB), although the Special Rapporteur has been unable to verify their membership of that movement, which is denied by the MAIB authorities. The villages that were occupied militarily and whose civilian population was subjected to abuses also belong, like the persons detained, to that ethnic group.

3. Military trial of the "rebels"

30. Those accused of the "attempted rebellion" on 21 January were tried summarily and publicly by a court martial held in Malabo, in May 1998, at the "Marfil" cinema. Military court proceedings in Equatorial Guinea, given their very summary nature and the restrictions placed on the right of defence, in particular with regard to the production of exculpatory evidence by the defendants and communication between lawyers and their clients, tend to affect strict compliance with due process of law. This view has been taken by Amnesty International, which sent two observers to the trial and also reported the lack of correspondence in many cases between the severe sentences passed and the specific actions in respect of which charges had been brought.

31. The judgement in this so-called "macro trial" on 29 May 1998 imposed severe sentences. They included 15 death sentences, for Epifanio Mohaba Babo (tried in absentia), Remigio Meta (tried in absentia), Anastasio Bita Rope (tried in absentia), Guillermo Salamon Echuaca ("Alex"; tried in absentia), Alejandro Mbe Bita, Leoncio Kota Ripola, Norberto Biabeda Bela, Reginaldo Bosio Davis, Ruben Mosibe Biancho, Ramón Riasa Malabo, Emilio Rivas Esara, Gabriel Borico Baja, Bienvenido Samba Momesore, David Sonde Muachuku and Domingo Effiong Iboc. The other sentences passed by the court martial imposed prison terms of 26 years in 37 cases, 12 years in 14 cases and 6 years in the remaining cases.

32. The President of the Republic, by decree No. 140/1998 of 9 September, commuted the death sentences to life imprisonment. These commuted sentences are welcomed by the Special Rapporteur - and he made this known to the Government - as a highly positive gesture in which the Head of State heeded the requests of the international community and thereby contributed to the pacification of relations with the Bubi ethnic group, to which, as already indicated, the convicted persons belonged.

4. The death of Martín Puye Topete

33. This person, a known opponent of the Government whose constant arrests were noted in the Special Rapporteur's previous reports, was tried in the military court as one of the ring-leaders of the attempted rebellion on 21 January 1998 and sentenced in May to 26 years' imprisonment; in July he died at the Malabo regional hospital. According to the medical report issued on 14 July 1998 by the hospital authorities, he died as a result of "hepatic failure caused by virus B". The Special Rapporteur believes that the acuteness of such an illness cannot be dissociated from the conditions of complete lack of hygiene, overcrowding and inadequate nutrition in which the prisoners - including Martín Puye - were kept at the general police station and then in the public prison at Malabo, as indicated in paragraph 28 of this report.

5. New arrests after the events of 21 January 1998

34. Persons belonging to the Bubi ethnic group were arrested in the second half of November 1998, on the island of Bioko, and accused of concealing the fugitive ring-leaders of the attempted rebellion on 21 January (Guillermo Salamon Echuaca ("Alex") and two others), who had been convicted in absentia. The detainees have undergone preliminary investigation prior to their prosecution. There are 23 men and 7 women being kept in the Malabo general police station, where the Special Rapporteur and members of the mission were able to speak to them in private. Most of the male detainees showed clear signs of injuries on their arms and legs caused as a result of the bonds by which they were lifted from the ground as a form of torture to make them talk. They are accused of having helped to conceal the aforementioned rebel leaders and of having enabled them to flee in separate boats (dugout canoes) to Cameroon. The group includes four Cameroonians allegedly involved in the acts in question.

G. Other political arrests

35. Citizens Guillermo Nguema Ela (former Minister) and Felipe Ondó Obiang Alogo (former Minister and former President of the Parliament), leaders of the Fuerza Democrática Republicana (FDR) group, which has not thus far been recognized by the Government as a political party, have again been subjected to imprisonment. Their cases were discussed in the report submitted to the Commission in 1998 (E/CN.4/1998/73, paragraph 57), although at the time of his last visit they had been released on parole. As they had stated when interviewed at Malabo prison, these persons were convicted in an irregular trial, on the motion of the Attorney-General, for the offence of making "false accusations and complaints"; they were sentenced to prison terms of two years and six months, and were each fined CFAF 200,000 (US$ 1 = CFAF 600) and together ordered to pay a further CFAF 25 million (about $42,000 at the current exchange rate) in compensation to the State because of a communication signed by them in September in which they complained of having been subjected to extremely close surveillance and control and feared that they would be implicated in activities that might be presented as a "coup d'état". The convicted persons have described the case as one of political persecution, on account of their having sought to express their opinions freely and make their ideas known to the public. The Special Rapporteur, who is in possession of a

copy of the judgement, cannot but regret this sentence since, in his view, the text of the communication points to no criminal activity that would be punishable under the penal law, but only to the exercise of rights recognized by the Fundamental Law, such as the right to freedom of expression. The conviction has been appealed to the Supreme Court by the lawyer defending the two men.

36. The well-known criminal lawyer and secretary-general of one of the parties awaiting recognition, José Oló Obono, is now in the Malabo public prison, having been sentenced to five months' imprisonment, fined CFAF 200,000 and ordered to pay a further CFAF 15 million (about $25,000) in compensation to the State for the offence of "insulting the Government". It appears from the judgement delivered by the Appeal Court in the island region - of which a copy is in the Special Rapporteur's possession - that the lawyer levelled hard and strong criticism at the authorities during an interview he gave to the Spanish press in connection with the death of his former client, Martín Puye Topete (see paragraph 33). In the Special Rapporteur's view, the case involves no crime under the penal law, but only the exercise of rights recognized by the Fundamental Law, such as the right to freedom of expression. At the same time, the judgement calls for the person in question to be punished for having attempted to perform freely his functions as a lawyer acting for the family of his former client, Martín Puye Topete, which was asking for the return of the latter's body (principles 16, 17 and 23 of the Basic Principles on the Role of Lawyers).

37. Another serious incident occurred in early November 1998 when four members of the Convergencia para la Democracia Social (CPDS) party attempted to bring into Equatorial Guinea from Gabon 60 copies of a book published in Spain under the title "Equatorial Guinea at the crossroads". The persons detained in this connection on 1 November were Alberto Mbé, his wives Asunción Nsang Eló and María Luisa Abuy Ekó, and Benjamín Mbá, residents of the village of Acoá, near Acurenam. The books were intended for the architect Amancio Gabriel Nzé, the CPDS leader and a former candidate for the office of President of the Republic of Equatorial Guinea. All were held at Bata police station in the Río Muni region. The first three were beaten and insulted by the authorities arresting them in the village of Acoá. The Special Rapporteur went to the Bata general police station and was able to speak to Amancio Gabriel Nzé and the two women mentioned, but not to Alberto Mbé or Benjamín Mba, who were not there, as he discovered, and the authorities were unable to account for their whereabouts. The Special Rapporteur wishes to express his concern about these matters: first, because it was not possible to find out where the two detainees (Alberto Mbé and Benjamín Mbá) had been taken; and secondly because, according to the Bata police authorities, no criminal charges had been brought against the detainees, although they had been in custody for more than 40 days by the time of his visit.

H. Prisons of Malabo and Bata

38. During its visit to the Malabo public prison, the mission interviewed the inmates individually and confidentially, and was able to establish that there has been no improvement in the situation as described in the previous report (E/CN.4/1998/73, parasgraph 49-51). The lack of medical care and very inadequate nutrition are compounded by overcrowding, the prison population

having increased from 32 inmates in December 1997 to a current total of 123 inmates, including both men and women. The daily diet remains inadequate and is limited to two loaves a day, with a meagre portion of sardines and rice once every three or four days, although this does not reach all the inmates. Medical care also continues to be inadequate and there is still a shortage of the most essential medicines (against malaria, which affects virtually everyone) for treating the prisoners.

39. The Special Rapporteur was able to confirm that the treatment received in prison - aside from the serious shortcomings already noted - was generally good and none of the detainees complained of harassment or ill-treatment. The exception relates to the 11 persons who were sentenced to death by the court martial (the "macro trial" of 29 May 1998) and whose sentences were commuted by the President of the Republic on 9 September to life imprisonment (see paragraphs 31 and 32). The 11 inmates are confined 24 hours a day in very small cells (2 x 1.4 metres), with only a small inlet for air and light in the roof; they are subjected to the highest temperatures prevailing in the place, prevented from having visits and kept completely isolated, including from other inmates. They leave their cells only to wash, perform their physical needs and sometimes eat. This treatment, which may be described as cruel and inhuman, infringes the international standards for the treatment of prisoners.

40. Inmates continue to perform unpaid compulsory labour outside the prison grounds, with the exception of the 11 persons mentioned in the preceding paragraph, who are not allowed to leave the prison compound. The Special Rapporteur has indicated in previous reports that the fact that work exists and is being performed outside the prison walls is very positive and shows that the prisoners are humanely treated. However, he has also pointed out that prisoners should be remunerated for this work so that they can provide financially for their families and that the work should come under the control of the judicial authorities, which is not currently the case. In this connection, the authorities should be reminded that the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations in 1957 and 1977 provide examples and guidelines for action by Governments in prison matters (see, in particular, articles 75 and 76).

41. During his visit to the prison at Bata, the Special Rapporteur found a situation similar to that obtaining at the Malabo prison as regards serious shortcomings in nutrition and medical care for the inmates, as well as a lack of hygiene. The problem seems to be on a quantitatively smaller scale, since the male prison population consists of only 16 inmates. At the time of the mission, no women were to be found in the prison although, according to information received from the male inmates, six women prisoners had been removed the day before, those cases relating to non-payment of bride price, a matter on which questions had already been put by the Special Rapporteur when he visited the Malabo prison (this point is considered in paragraphs 49 and 50).

I. Other persons deprived of their liberty

42. There were no major trials other than those mentioned, nor any cases of prolonged detention. However, leaders and activists of opposition political parties in the Río Muni region have been deprived of their liberty for short periods owing to decisions by the "peripheral authorities". Such cases of

deprivation of liberty have often been accompanied by physical ill-treatment and threats to deter the detainees from exercising their political rights. The practice of imposing fines as a substitute for detention has continued. These heavy fines, which are fixed arbitrarily by the peripheral (non-judicial) authorities, must be paid before freedom can be regained. The Special Rapporteur wishes to draw attention once again to his previous comments regarding the lack of experience of democracy in these rural areas (see E/CN.4/1998/73, paragraph 48). In the mission's opinion, the smaller number of incidents recorded in 1998 is mainly attributable to the lower level of activity of the political parties in a non-election year.

43. These arrests contravene the legislation in force and also run counter to the agreements reached in April 1997 between the Government and the opposition. In those agreements the Government committed itself to putting an end to "intermittent detentions". In addition, they are contrary to the provisions of Decree No. 75 of 13 May 1997, which sets out the undertaking by the Government and the political parties to prohibit any action or act of commission or omission intended to restrict the free exercise of fundamental rights and freedoms and to ensure that the political parties can pursue their activities freely throughout the national territory. By that instrument, the Government undertook to punish the arbitrary acts of public officials and law enforcement officers which impair or restrict guaranteed rights and required the authorities to refrain from any interference that might make it difficult for the political parties to comply with article 9 of the Constitution.

44. The Special Rapporteur has already noted the use of torture on persons arrested after the events of 21 January 1998 and those detained in Malabo in November 1998 in connection with the same events, as well as in the case of the four persons detained in the mainland region - in the village of Acoá - for bringing copies of a book into the country (see paragraph 37). In this respect, the Special Rapporteur wishes to draw the attention of the authorities to the imperative need to combat the impunity enjoyed by agents of the State who violate human rights. He also wishes to refer to principles 11, 18 and 19 of the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the United Nations in November 1985. Those principles establish the obligation of States to ensure that the victims receive restitution, compensation and assistance.

IV. SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Economic and social situation

45. There has been no change in relation to the extreme poverty which forms an obstacle to human development and is undermining the realization of human rights in the country. As the United Nations Development Programme (UNDP) indicated in its Assessment Note for the establishment of the framework of cooperation with Equatorial Guinea (April 1997), inequalities continue to abound, with more than 80 per cent of the national income being amassed by 5 per cent of the population (section II.B.7).

46. In this respect, Equatorial Guinea ranks among the countries with the lowest human development index. The illiteracy rate is 22.9 per cent and only 32 per cent and 37 per cent of the population have access, respectively, to

drinking water and health services. These last two percentages are of particular significance inasmuch as they are directly related to the incidence of the transmissible diseases which are the commonest causes of death in the country. According to the General Population Census of 1994, Equatorial Guinea has a population of 406,151 (48 per cent males and 52 per cent females), with a growth rate of 2.9 per cent per year, which implies a doubling of the population within 30 years.

47. Since October 1996, the Republic of Equatorial Guinea has been a significant oil producer, with a current output of almost 90,000 barrels per day. At the time this report was prepared, no perceptible improvement in the quality of life of the people had resulted from the large fiscal revenues derived from oil production and exports. Indeed, there is no major investment in health, education, housing or public works.

B. Health

48. Despite the efforts made by the Government and the organizations supporting it (principally the World Health Organization) to develop this sector, the health statistics are still worrying because of the great prevalence of infectious diseases, especially malaria, the inaccessibility of rural health services and poor hygiene. According to WHO, the main causes of death are: malaria, acute respiratory infections, forms of anaemia, malnutrition, hepatic abscesses, other respiratory diseases, gestoses, arterial hypertension and AIDS. The infant mortality rate is 111 per 1,000, the maternal mortality rate is 400 per 100,000 and life expectancy averages about 55 years. In this sector, independent experts have noted an improvement in hospital facilities compared with previous years.

C. Status of women

49. This mission has again noted that women are being kept in prison for unspecified periods because their families have not restituted to their former husbands, upon dissolution of the union, the amount of the bride price received at the time of ratification of the marriage. This kind of traditional and customary practice, which may be equated with imprisonment for debt and is furthermore of unspecified duration ("until she returns the bride price"), constitutes a violation of article 11 of the International Covenant on Civil and Political Rights, to which Equatorial Guinea has acceded, and of the principles requiring the establishment of a time limit for sentences.

50. Two women, Pacificación Nchama Ondó and a 15-year-old minor called Ester, are currently being held in the Malabo public prison for the aforementioned reason. The Special Rapporteur raised these two cases of "imprisonment for debt" in a note to the Minister of Justice and to the Minister for Social Affairs and the Status of Women. The latter, in an interview with the mission, said that she knew nothing about the circumstances; the Special Rapporteur made a point of indicating the seriousness of this recurrent practice.

51. In connection with another matter, the Special Rapporteur conveyed to the Minister his concern about information received (from UNICEF) regarding

the interrelated issues of the rising school drop-out rate among females and the growth of juvenile prostitution. This was described by the high-ranking official as a minor problem that is under control.

52. It is calculated that 52 per cent of the total population (406,151 inhabitants) are female, of whom 84,000 are of child-bearing age. According to the second Population and Housing Census (1994), 96.5 per cent of males can read and write, as against only 71.5 per cent of females. While a gender balance exists in primary education, this balance is reduced drastically at the secondary and higher levels, with females accounting for 35.3 per cent of pupils at the intermediate level and only 9.8 per cent of students in higher education (source: "Seminar on Gender, Population and Development", Ministry for Social Affairs and the Status of Women, UNFPA, UNDP and UNICEF, Malabo, 1998).

53. The Special Rapporteur considers it appropriate to reiterate the importance of the significant data on the status of women contained in an April 1997 UNDP Assessment Note for the country cooperation framework. The relevant part of this document was transcribed in the Special Rapporteur's previous report (E/CN.4/1998/73, paragraph 60).

54. In the area of health, the statistics show that the calorie intake of the female population in Equatorial Guinea is significantly lower than the recognized international indicators. In addition, the incidence of sexually transmitted diseases continues to be very high among women in this country. Despite the efforts made by the State and the international cooperation agencies, women are still exposed to high risks associated with multiple parities, badly timed or early pregnancies and a lack of prenatal and post-natal care. The maternal mortality rate is estimated at 400 per 100,000. Furthermore, there is insufficient family planning and no adequate sex education for the female population. This accounts for the underutilization of modern contraceptive methods among females aged 15 to 44 years, with only 0.7 per cent of them using such methods.

55. With regard to discrimination against women in law, a report entitled "Situation of the Administration of Justice in Equatorial Guinea" (August 1998) produced by a UNDP expert, at the request of the Supreme Court, observes: "Customary law needs to be considered in the light of fundamental rights. For example, it should be mentioned in particular that it conflicts with the Convention on the Elimination of All Forms of Discrimination against Women and the principle of the legality of offences and penalties. Concerning the first aspect, customary law, particularly in the case of the Fang community, has some features that discriminate against women, who are at a disadvantage, for example, as regards the custody of children and in relation to adultery; the law shows clearly in this case that discrimination against women is not an exclusive feature of customary law, but is also reflected in written law. For example, in the case of adultery, which is punishable under the Penal Code, for an offence to have been committed it is enough for the woman to have had sexual intercourse with a man other than her husband, whereas in the case of the man there needs to have been a long relationship involving cohabitation or maintenance."

56. The positive points to be mentioned are the existence of a ministry specifically for women, and the efforts it is making to overcome this situation of discrimination from which women in Equatorial Guinea suffer in practice and within society, notwithstanding the equality assured by most legal provisions. This commendable effort must be continued, as the situation is still greatly in need of being remedied.

D. Ethnic diversity and conflict

57. The Commission on Human Rights, in its resolution 1998/71, invited Equatorial Guinea to become a party to the International Convention on the Elimination of All Forms of Racial Discrimination, which it has not yet done. The Special Rapporteur has informed the Commission in previous years of the existence of a situation in which persons belonging to the Bubi ethnic group on the island of Bioko and persons originating from the island of Annobon are discriminated against and subjected to inferior treatment. The persistence of this situation was confirmed during the latest visit. It has given rise to tension in the case of the Bubis, as a result of the regrettable violent incidents caused in the early hours of 21 January 1998 by persons belonging to that ethnic group, and the repression unleashed by the army and security forces in their villages. Generally speaking, the victims of such abuses are actual or presumed members or sympathizers of the Movimiento para la Autodeterminación de la Isla de Bioko (MAIB).

58. As pointed out in previous reports, nothing should prevent the Bubis from campaigning for the exercise of the right of self-determination, which international law recognizes in principle for every "people", and from being able to act freely without discrimination or repression, subject to the limitations on this right specified by the Committee on the Elimination of Racial Discrimination, which functions under the International Convention on the Elimination of All Forms of Racial Discrimination. These limitations, as defined by international law, are concerned with safeguarding the territorial integrity, political unity and sovereignty of States, and are therefore opposed to any unilateral declaration of secession from a State.

59. Accordingly, the Special Rapporteur urged the authorities of Equatorial Guinea, in his interviews with them, to encourage forms of functional autonomy that would guarantee the participation of the members of the Bubi ethnic group in society, while preserving the cultural, religious and political institutions proper to their identity as a people and their traditions as very ancient inhabitants of the island of Bioko.

V. CONCLUSIONS

60. As indicated at the beginning of this report (paragraph 9), the investigations carried out during this new mission to Equatorial Guinea lead the Special Rapporteur to draw the following conclusions:

(a) He notes a disturbing lack of progress towards democratization;

(b) With regard specifically to human rights, after the attempted rebellion of 21 January 1998, there has been a setback with cases of violations of those rights affecting not only individual guarantees but also the institutional and social life of Equatorial Guinea;

(c) He feels bound to reiterate the concern expressed in Commission resolution 1998/71 over "the continuing existence of deficiencies and conditions that lead to violations and abuses of human rights, including cases of prolonged incommunicado detention". Torture also appears to be a very frequent practice during police interrogations;

(d) In order to overcome the difficulties, intensive technical assistance will be needed from the Office of the United Nations High Commissioner for Human Rights, including training courses, seminars and workshops, with a view to removing the major political, cultural and social obstacles to the consolidation of the democratic process and the effective exercise of human rights.

61. It does not appear that the independence of the judiciary has been strengthened, or that the functional deficiencies noted in the Special Rapporteur's previous report (E/CN.4/1998/73) have been remedied. With regard to the deficiencies of the judiciary, the above-cited report entitled 'Situation of the Administration of Justice in Equatorial Guinea" (August 1998) provides a clear diagnosis in paragraph 55, as follows: "The distinguishing characteristic of the judiciary in Equatorial Guinea is its weakness: weakness in relation to the other powers of the State because of its vulnerability to political interference; weakness due to the insecurity associated with uncertainty as to the provisions in force; weakness because of its meagre budget and because of the lack of a system of administration; and, lastly, weakness stemming from the absence of a policy of training staff in the administration of justice."

62. The proceedings for recognition of non-governmental human rights organizations, which applied to the Ministry of the Interior for recognition several years ago, are still at a virtual standstill. The applications for legal authorization of other NGOs concerned with various social issues are also still pending. In his previous report, the Special Rapporteur again referred to General Assembly resolution 40/123 of 13 December 1985, which draws the attention of States to "the constructive role that national non-governmental organizations can play", as reaffirmed by the Vienna Declaration and Programme of Action of 1993. The Parliament of Equatorial Guinea recently passed a law on non-governmental organizations, the text of which was not made available to the Special Rapporteur. This instrument, being similar to the known bill, regrettably restricts the activities of NGOs and lacks the scope that would enable them to undertake broad and effective activities.

VI. RECOMMENDATIONS

63. Taking into account those recommendations formulated by the Commission on Human Rights in its resolution 1998/71 which have not been sufficiently

implemented by the Government and the Parliament of Equatorial Guinea, and other new ones that are now essential in view of the present situation, the Special Rapporteur makes the following recommendations:

(i) Laws, decrees and governmental acts should be published periodically and regularly;

(ii) Legislative and administrative measures should be taken to guarantee the complete independence and impartiality of the judiciary;

(iii) The military courts should be limited to trying strictly military offences committed by military personnel;

(iv) The authorities should take steps to put an immediate end to all acts of torture or ill-treatment, and should investigate, try and punish those responsible for such offences, as well as provide reparation for the victims. To secure the rule of law it is essential to terminate the impunity of those responsible in various ways for violations of human rights;

(v) The Government of Equatorial Guinea should continue the dialogue with all political parties to ensure the transparency of the electoral process leading to a new legislature within the framework of plurality and democratic coexistence. Furthermore, the State's legislative and administrative structure should be improved to ensure the exercise of political rights;

(vi) Recognition should be given to non-governmental human rights organizations, which are essential for the vitality of a democracy;

(vii) Equatorial Guinea should accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the International Convention on the Elimination of All Forms of Racial Discrimination. These conventions would facilitate the realization of the rights and guarantees to which they refer;

(viii) Efforts directed at the elimination of all inferior treatment and discrimination of which women are victims should be continued until they achieve equal opportunities with men and are fully integrated into the process of socio-economic, cultural and political development of the country;

(ix) The necessary conditions should be promoted to ensure that everyone can enjoy economic, social and cultural rights and to enable broad segments of the population of Equatorial Guinea to escape from the extreme poverty in which they are living;

(x) In accordance with Commission on Human Rights resolution 1997/46, which encourages cooperation between the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme, the Government of

Equatorial Guinea should be provided with the advisory services and technical cooperation it has requested. These services and cooperation will be arranged by the Office of the High Commissioner and should include courses of education and training in human rights. One particular goal will be to enhance the administration of justice. Assistance should also be directed towards strengthening the capacity of NGOs and other groups of civil society so that they have the requisite room for action to promote respect for human rights and an improvement in the quality of life of the population.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/42
20 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the former Yugoslavia

Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	3
I. BOSNIA AND HERZEGOVINA	3 - 35	3
A. General observations	3 - 6	3
B. Return of refugees and displaced persons	7 - 15	4
C. Refugees from Kosovo	16	6
D. Property rights and legislation	17 - 20	7
E. Economic and social rights	21 - 22	7
F. Human rights institutions	23 - 24	8
G. Rule of law	25 - 27	8
H. Missing persons	28	9
I. Conclusions and recommendations	29 - 35	10

GE.99-10297 (E)

CONTENTS (continued)

		Paragraphs	Page
II.	REPUBLIC OF CROATIA	36 - 78	11
	A. Introduction	36 - 37	11
	B. Returnees and refugees	38 - 44	11
	C. Administration of justice	45 - 47	12
	D. War crime trials	48 - 56	13
	E. Freedom of expression and information	57 - 59	15
	F. Missing and detained persons	60 - 62	16
	G. Liberty and security of the person	63 - 64	17
	H. Labour rights	65 - 67	17
	I. Gender issues	68 - 71	18
	J. Conclusions and recommendations	72 - 78	19
III.	FEDERAL REPUBLIC OF YUGOSLAVIA	79 - 119	20
	A. Introduction	79	20
	B. Steps to provide current information	80	20
	C. Sources of information	81	20
	D. Relations with the FRY	82	21
	E. Kosovo	83 - 96	21
	F. Restrictions on free expression	97 - 99	26
	G. Restrictions on academic freedoms	100 - 101	27
	H. Sandzak	102	28
	I. Montenegro	103 - 104	28
	J. Refugees and the Internally-Displaced	105 - 108	29
	K. Conclusions and recommendations	109 - 119	30

Introduction

1. This is the second comprehensive report on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Jiri Dienstbier. His first report was submitted to the General Assembly (A/53/322) on 11 September 1998 and was updated with an addendum on 30 October 1998 (A/53/322/Add.1). Because United Nations practice requires early submission of reports for editing and translation purposes, information contained in this report will be superseded by more recent events before its presentation to the Commission on Human Rights in spring 1999. The early due date of this report means that it will generally cover only events of November and early December 1998. The Special Rapporteur will further endeavour to discuss some general trends which he has observed since his initial appointment in March 1998. The Special Rapporteur would like to stress, however, that the practice of requiring the submission of reports more than three months before they are to be discussed in the Commission or the General Assembly is unacceptable and offers suitable arguments to those who would criticize the United Nations for ineffectiveness and excessive bureaucracy.

2. The Special Rapporteur would like to express his gratitude to the Office of the High Commissioner for Human Rights (OHCHR) for the support it has provided to his mandate, and especially to the field officers, who work under often difficult circumstances. All of the Special Rapporteur's missions are organized by OHCHR field offices, which also gather information and provide analysis of human rights developments. The Special Rapporteur has been gratified by the generous financial support provided by Governments to the field presences of OHCHR, and he is hopeful that this trend will continue in 1999.

I. BOSNIA AND HERZEGOVINA

A. General observations

3. Three years after the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto (Dayton Agreement) (S/1995/999, annex), the country continues to be divided along ethnic lines. While the Dayton Agreement stopped the fighting and the most egregious violations of human rights and international humanitarian law, underlying issues were to a large extent left to the parties to resolve among themselves on the basis of the Dayton principles. Human rights violations taking place today are directly linked to the parties' failure rigorously to implement the structures and mechanisms agreed to at Dayton. The implementation of Annex 7 (Refugees and Displaced Persons) to the Agreement has been especially poor, with an unacceptably low number of minority returns throughout the country, despite the enormous efforts and pressure brought to bear by the international community. Through the end of 1998 only some 50,000 minority returns had taken place, of which only some 2,000 were to the Entity of the Republika Srpska (RS). There is a huge gap between the verbal commitments of political leaders to respect the right to return and the reality on the ground. Authorities at all levels and in all parts of the country consistently obstruct return programmes in ever-more imaginative ways.

4. In theory the Dayton Agreement guarantees the highest level of human rights standards to the citizens of Bosnia and Herzegovina. In practice, any objective assessment would have to conclude that rights violations continue on a large scale. State actors persistently fail to respect, protect or fulfil their obligations towards citizens. The international community, present in Bosnia and Herzegovina on an unprecedented scale, is pressing ahead with efforts at reform of police and the judiciary to improve the protection of human rights and to make the process self-sustainable. While the Special Rapporteur fully supports these programmes, he would like to see more attention given to the genuine building of civic society. Rushed programmes and the tendency toward imposing solutions from outside will not bring lasting results. It must be recognized that an international presence will have to remain in Bosnia and Herzegovina for a long time to allow for the reconciliation and democratization processes to take root.

5. The Special Rapporteur visited Bosnia and Herzegovina from 4-9 July 1998 and again on 5-8 December 1998. During the latter visit he participated in a Human Rights Conference organized by the Human Rights Centre of the University of Sarajevo and the Council of Europe in commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights. At that time he also met with representatives of local non-governmental organizations (NGOs), international organizations such as the United Nations High Commissioner for Refugees (UNHCR), and the High Representative in Bosnia and Herzegovina, Mr. Carlos Westendorp.

6. The Special Rapporteur welcomed new institutional arrangements undertaken in Bosnia and Herzegovina, by which the OHCHR field presence would be formally located within the Office of the Special Representative of the Secretary-General in Bosnia and Herzegovina, while maintaining close cooperation with the Office of the High Representative. This arrangement will benefit the Special Rapporteur by providing him better access to information on human rights gathered and verified by these organizations. The Special Rapporteur, while recognizing the importance of receiving all relevant information on the human rights situation from the field, would like to emphasize again the independent character of his mandate, by which any observations, conclusions and recommendations he makes are his alone.

B. Return of refugees and displaced persons

7. The Dayton Agreement guaranteed the right of all refugees and displaced persons freely to return to their homes of origin and to have restored to them, or to receive compensation for, property of which they were deprived in the course of hostilities since 1991. The parties promised to ensure that returns can occur with full security, without fear of harassment, intimidation, persecution or discrimination. The right to choose one's destination freely and the right to information were also guaranteed. These rights are without doubt among the most frequently violated rights in Bosnia and Herzegovina.

8. Three years after, Dayton conditions are still deeply unsatisfactory for returns, especially for the return of minorities. While freedom of movement improved in 1998 following the introduction of common automobile licence plates, other conditions necessary for returns have not materialized. The

main obstacles to returns remain inadequate security and lack of protection of social and economic rights, particularly those related to property and housing.

9. As reported previously by the Special Rapporteur, violence targeting returnees and potential returnees was widespread in 1998. Incidents were reported from all areas of the country, but the Special Rapporteur must stress his concern over Bosnian Croat-controlled areas, including Stolac, where serious threats to the security of the returnees as well as to international organizations working for returns persisted throughout the year, up to the writing of this report. Large-scale destruction of returnees' property and violent incidents targeting returnees were almost daily occurrences. The situation has remained tense and the safety of returnees has required the presence of tanks of the international Stabilization Force (SFOR) at the site.

10. It is typical of Bosnia and Herzegovina that the local context in which returns happen varies a great deal. If one looks only at the statistics of human rights violations it is possible to be easily misled. For example, in eastern parts of Republika Srpska, the number of security-related incidents against returnees appears to be low. However, this is due to the fact that return movements to these areas, "ethnically cleansed" of Bosnian Muslims during the early stages of the war, have not really even started.

11. Also, methods of obstructing returns vary. While violence against returnees and lack of police action to protect returnees' rights are easily detected, more sophisticated methods of obstructing returns, such as different administrative and legal obstacles and corrupt practices of local authorities, are more difficult to discern. Yet this kind of obstruction is practised rampantly in all areas of Bosnia and Herzegovina.

12. The Special Rapporteur attended the Humanitarian Issues Working Group meeting in Geneva on 20 November, in which UNHCR's paper on Progress in and Prospects for Sustainable Return and Solutions in the Former Yugoslavia (HIWG/98/9 of 16 November 1998) was discussed. The Special Rapporteur would like to express his support for the extremely difficult task that UNHCR is trying to accomplish in the region of the former Yugoslavia to facilitate return movements. He agrees with UNHCR that the central lesson learnt from 1998 is that reaching the goals of the international community, and thereby meeting the aspirations of the great majority of the peoples of the region, will be a time-consuming process - much longer and more demanding than many had expected at the conclusion of the Dayton Agreement.

13. The Special Rapporteur unequivocally supports the right to return to one's home of origin as a fundamental human right. At the same time, it must be recognized that large and ever-increasing numbers of refugees and displaced persons are deciding not to return home. The Special Rapporteur agrees with UNHCR that those persons who have decided not to return need help to rebuild their lives and should not be left in limbo. It is of paramount importance that the choice of residence can be exercised freely and voluntarily without any manipulation or pressures. Such free choice cannot be exercised unless obstacles to return are removed or at least significantly reduced.

14. In Bosnia and Herzegovina, the security environment in the long run requires the development of professional and depoliticized police forces and judiciaries. In the short term, the presence of international military forces and their active support for the implementation of civilian aspects of the Dayton Agreement will remain imperative. Access to adequate housing is another key element. Thus, rigorous implementation of the property and housing legislation now in place in both Entities is fundamentally important. So far, monitoring of the implementation of the property and housing laws of the Federation of Bosnia and Herzegovina has revealed serious problems and only very few returnees have actually managed to repossess their pre-war housing. In the Republika Srpska, property and housing laws were only passed in early December 1998, but it is very likely that it will prove difficult to enforce them.

15. A number of other issues have to be addressed in addition to those mentioned above. The authorities have to start providing full and unhindered access to all public documents necessary for returnees to realize their rights. Discriminatory treatment in the areas of employment, education, health and social welfare must be eliminated and access to all public services, such as water, gas and electricity ensured. The Special Rapporteur fully supports the increased attention paid by the international community to ensuring these rights to all without discrimination. It is of utmost importance that refugees and displaced persons be provided with information on their rights and effective mechanisms to realize them. It is also vital that local NGOs providing information and legal services to the refugee and displaced population are strengthened and provided with the necessary resources to fulfil their important role.

C. Refugees from Kosovo

16. The Special Rapporteur would like to draw attention to the plight of Kosovo refugees in Bosnia and Herzegovina, most of them women and children, many of whom continue to live in extremely bad living conditions. The Special Rapporteur visited in early December the refugee camp in a former Coca Cola factory in Hadzici, near Sarajevo, where some 1,200 refugees have been accommodated for months without proper heating and in totally inadequate hygienic conditions, despite the efforts of UNHCR to provide adequate facilities. According to the instructions on the temporary admission of refugees from Kosovo, the refugees are to be granted the right to a temporary stay and necessary assistance. At the time of the visit of the Special Rapporteur, the conditions observed were far from satisfactory and urgent action was needed on behalf of State and Federation authorities to improve the conditions and to transfer the refugees to suitable accommodation. The order for provisional measures issued by the Human Rights Chamber on 4 December based on the application of some refugees, directed the authorities (both the state of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina) to take all necessary steps to protect applicants' health by improving the heating and sanitary conditions in the refugee camp and by considering the applicants' transfer to more suitable premises. The Special Rapporteur, through the field presence of OHCHR, is following closely the steps taken by the authorities to comply with the order of the Human Rights Chamber.

D. Property rights and legislation

17. Due to massive displacement during the war, the destruction of huge numbers of properties and complex wartime property legislation, property violations are among the most pervasive rights violations in Bosnia and Herzegovina. Re-establishing the rule of law in this area is one of the most difficult tasks facing Bosnian society. As described by the Special Rapporteur on previous occasions, property and housing laws were amended in the Federation and entered into force on 4 April 1998. The implementation of these laws faced serious obstacles and there were widespread unlawful practices on the part of municipal housing authorities, which led the High Representative to extend by six months the 4 October deadline for submitting claims to socially-owned apartments. Since the decision to extend the deadline, the registration of claims in most municipalities reportedly has improved. However, deadlines prescribed by the laws for taking decisions are still usually not complied with, and progress on deciding claims is unacceptably low. The overwhelming majority of claimants still have not regained possession of their properties.

18. In the Republika Srpska, property laws were finally passed by the RS National Assembly in late 1998. The laws, which at the time of writing this report were not yet available, will presumably have similar provisions to those of the Federation.

19. It should be emphasized that the passing of the property laws in both Entities was a major achievement, achieved by the exertion of enormous pressure by the international community. Monitoring and enforcing compliance with the laws will require continuing efforts as local authorities are extremely reluctant to implement the laws and thus enable pre-war occupants of property to return.

20. The evictions of illegal occupants, necessary for the reinstatement of returnees to their pre-war homes in Republika Srpska, have continued to encounter delays. Despite repeated interventions by the international community, action by local police to enforce evictions remains weak. The situation of "floaters" (persons illegally evicted from their property during the war, who remain in Banja Luka) remains practically unresolved. There were five reinstatements of "floaters" reported in Banja Luka during August 1998, none during the elections period in September, and a further four in October. In the first half of November five court-ordered evictions were scheduled, but none were carried out. The Helsinki Committee for Human Rights in Republika Srpska reported to the Special Rapporteur the similar situation of minorities in the Bijeljina area, who had been illegally evicted from their properties and had stayed in Bijeljina in desperate living conditions.

E. Economic and social rights

21. The International Covenant on Economic, Social and Cultural Rights, which is binding on Bosnia and Herzegovina, contains some of the most significant international legal provisions establishing economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of health, to education and to enjoyment of

benefits of cultural freedom. The Covenant obliges States to take steps by all appropriate means, including by adoption of legislative measures, to achieve progressively these rights without discrimination. The Covenant specifically guarantees that men and women possess precisely the same legal entitlements and provides a framework for measures to be taken so that women may enjoy on an equal footing rights which have often been denied to them.

22. Information received from various sources, including the Federation Ombudsmen and local NGOs, indicates that violations of economic and social rights are common and discrimination is widespread. Discrimination in employment on all grounds (including ethnic origin, political affiliation or opinion, and gender) has been singled out as one of the most serious problems and needs to be addressed. There is an urgent need to review current and proposed labour legislation to incorporate non-discrimination principles from the beginning. Mechanisms to protect workers' rights must be developed and implemented.

F. Human rights institutions

1. Commission on Human Rights

23. The Dayton Agreement created institutions specifically to deal with the protection of human rights in Bosnia and Herzegovina. The Commission on Human Rights, created by Annex 6 of the Agreement, consists of the Human Rights Chamber, a judicial body with powers to issue binding decisions, and the Human Rights Ombudsperson, a mediation-oriented body that has powers to conduct investigations and issue recommendations. The Dayton Agreement obligates the Parties to cooperate fully with the Annex 6 institutions and to comply with their decisions and recommendations. In 1998 the cooperation of State and entity authorities with the Commission was impeded by the slow process of appointment of governmental agents to the Commission. Implementation of final and binding decisions of the Human Rights Chamber has been far from satisfactory. With regard to the recommendations of the Ombudsperson, compliance by the RS authorities has improved significantly, whereas compliance by the Federation and the State remains problematic.

2. Entity institutions

24. The institution of the Federation Ombudsmen, established by the Washington Agreement in 1994, is composed of three Ombudsmen, and is competent to conduct investigations into human rights violations in the territory of the Federation. The institution has nine branch offices throughout the Federation. Although the cooperation of the authorities with the Federation Ombudsmen has generally improved during 1998, it remains erratic in more politically-sensitive human rights cases. The Special Rapporteur, closely follows the work of the Federation Ombudsmen and intends to maintain a good cooperation with them. He strongly encourages the RS authorities to create an Ombudsmen-type institution.

G. Rule of Law

25. The establishment of genuine rule of law in Bosnia and Herzegovina is the highest priority. This requires a thorough and comprehensive reform of

the judicial system. The Constitution of Bosnia and Herzegovina stipulates that Bosnia and Herzegovina shall be a democratic State which shall operate under the rule of law. It obliges the State and both Entities to ensure the highest level of internationally recognized human rights and fundamental freedoms. Reality, however, is very different. The task is a difficult one, as Bosnia and Herzegovina has to go through a transition from a socialist system to a democracy at the same time as it is recovering from the conflict that divided the country. However, Bosnia and Herzegovina is in a relatively privileged position, as there are many agencies present, both intergovernmental and non-governmental, which are willing to assist in this process.

26. The main problem is the lack of an independent and impartial judiciary in both Entities. There is lack of transparency and unacceptable political involvement at all stages of judicial process, including the prosecution. For example, in numerous cases of violence against returnees the prosecution of perpetrators is inadequate or totally lacking, even if the perpetrators have been identified. The courts often do not respect the rights of members of ethnic groups, whose cases are left pending for long periods or never taken up. When the courts issue decisions, they are not enforced. The problems are further complicated by the complexity of the legal framework, the destruction of the infrastructure and losses of professional personnel.

27. The establishment of the rule of law requires the restructuring and reform of police, tasks undertaken by the United Nations International Police Task Force. The establishment of multi-ethnic, professional and depoliticized police forces in both Entities, which is still far from having been completed, is vital for sustainable returns of minorities. As reported in the October update report of the Special Rapporteur, Bosnian Serb police officers constitute only 1.17 per cent of the Federation police force. In the Republika Srspka, Bosniaks and Bosnian Croats constitute 2.77 per cent of the total RS police force. The number of women serving in the police forces in both Entities is also far too low - below 1 per cent. Gender specific crimes, such as domestic violence and rape, cannot be properly addressed under the current circumstances. Training of all police should include human rights training and gender sensitization.

H. Missing persons

28. The extent of the problem of missing persons in Bosnia and Herzegovina is huge. Some 20,000 people were reported missing during the conflict, according to data available from the International Committee of the Red Cross (ICRC). It is generally acknowledged that the majority of the missing have died. Allegations of hidden detentions have reportedly decreased and continued to be checked by the ICRC and the United Nations International Police Task Force. Unannounced visits to alleged places of detention and prison facilities have been conducted by both agencies. In 1998 no hidden detainees were found. The process of exhumations and identification will be the most effective and reliable way of resolving the cases of missing persons. In 1998 the joint exhumation process, coordinated by the Office of the High Representative and carried out by teams of local commissions (Bosniac, Serb and Croat), monitored by international experts, has been carried out without

major problems, including across inter-Entity lines. As of 10 December 1998 the number of graves exhumed was 310, with a total of 1,753 bodies exhumed and an identification percentage of approximately 70 per cent.

I. Conclusions and recommendations

29. The Special Rapporteur is once again obliged to conclude that while some improvements in the situation of human rights can be observed, the authorities and political leaders currently in power in Bosnia and Herzegovina continue to undermine efforts aimed at integrating the country, which is divided along ethnic lines.

30. The return process continues to be obstructed in many ways and so far the results have been insignificant, in particular if measured against the efforts and resources spent by the international community. The efforts to improve security have to be stepped up and property rights, as guaranteed in the new property and housing laws in both Entities, have to be respected. The manipulation of returnees and displaced persons has to be stopped. Refugees and displaced persons must be able freely to choose whether to return or stay and they have to be given objective information on conditions for return, including the security situation.

31. A high priority has to be given to the resolution of the situation of "floaters" in Banja Luka and other municipalities in the Republika Srpska. This would send the right signal to others contemplating returning.

32. The transition of Bosnia and Herzegovina into a democratic society built on rule of law and respecting the human rights of all is a long-term process. The Special Rapporteur believes that the presence and the commitment of international community in Bosnia and Herzegovina will be needed for a long time. The programmes and activities of different agencies have been moving in the right direction and coordination of different actors appears to be sufficient and improving. However, the Special Rapporteur believes that local actors, including non-governmental organizations, should be more involved in human rights work, also on the policy level.

33. The prosecution and punishment of war criminals in the International Criminal Tribunal for the Former Yugoslavia in The Hague, which has gained momentum in 1998, has to be speeded up and the indictees still at large, mainly in the Republika Srpska, should either surrender or be arrested. As there is misinformation on the mandate and activities of the ICTY, efforts should be made to improve the knowledge of the population in general of the work of the ICTY, in particular its mandate, procedures and decisions issued so far.

34. The Special Rapporteur believes that the reconciliation process would benefit from the establishment of some kind of truth commission. The local actors whom the Special Rapporteur has spoken with all seem to support this kind of process.

35. The Special Rapporteur believes that accession to the Council of Europe should not be granted before Bosnia and Herzegovina meets the minimum conditions which had been set for the opening of the procedure. The

conditions which had been set for the opening of the procedure. The assessment has to be made on the real situation and not on formal grounds or for political reasons.

II. REPUBLIC OF CROATIA

A. Introduction

36. The present report is based on information compiled from a variety of sources by the Zagreb office of the (United Nations) High Commissioner for Human Rights (OHCHR). It takes into account information from the Government of Croatia, including the Government's reactions to the reports of OHCHR Croatia. It is further based on first-hand field work, the reports of other international organizations, Croatian lawyers, and local and international non-governmental organizations (NGOs).

37. The Special Rapporteur wishes to thank the Government of Croatia, as well as local and international organizations in the field, for their assistance to OHCHR in Zagreb and for their generous cooperation in the exercise of his mandate.

B. Returnees and refugees

38. On a positive note, in the context of the Programme for the Return and Accommodation of Displaced Persons, Refugees and Resettled Persons endorsed by Parliament on 26 June 1998, the Government of Croatia has adopted recommendations for legal reforms related to the return process, which had been suggested by a group of international and government legal experts in October - such as a new Law on Areas of Special State Concern - which are designed to overcome existing discriminatory legal provisions that have impeded return and repossession of property. It is to be hoped that these changes will help ensure the equality of all eligible persons, regardless of nationality, with respect to entitlements, benefits and obligations.

39. The Government, in November 1998, began issuing temporary green cards affirming returnee status to both organized and spontaneous returnees who returned to their places of origin in Croatia, with the intention of making it easier for them to have access to rights and entitlements while awaiting identification and other documents. Preliminary reports, however, note that the temporary cards do not provide substantial benefits, particularly access to health care. The process for acquisition of permanent green cards has been criticized by several international organizations in Croatia as a time-consuming, complicated and expensive process. Returnees are required to provide a large number of documents and are expected to travel several times to regional offices, often at relatively great expense. Spontaneous returnees, who are more numerous than organized ones, find the process even more difficult.

40. Progress in the implementation of core aspects of the Return Programme, such as improved procedures for the repossession of property, has been generally uneven. In this regard, the Special Rapporteur notes with concern that the Government continues to maintain that tenancy rights no longer exist in Croatia and that returnees will not be able to regain such rights. A major

problem for returnees continues to be the occupation of Serb houses by Croat settlers. Also, there is a lack of information about the procedure for obtaining Croatian documents, as well as restrictive administrative requirements to fulfill this procedure. The Special Rapporteur realizes the tremendous difficulties that widespread unemployment and the prevalence of land mines also present to the success of the return process.

41. The complex process of organized returns to Croatia continues to be closely monitored by the international community. On 10 November, a group of 33 persons, the first to be repatriated from the Republika Srpska (Bosnia and Herzegovina) under the Return Programme, came back to Sisak, Kostajnica, Dvor and Petrinja in the former Sector North. Of the 6,930 people cleared for return from the FRY and the Republika Srpska, the Office for Displaced Persons and Refugees (ODPR) reports that 1,541 persons returned under the organized mechanism and 1,172 returned spontaneously.

42. Meanwhile, the Government Commission on Return met on 20 November, its third meeting in six months. Key issues, such as returnee benefits and the provision of alternative accommodation to those currently occupying Serb houses - which could facilitate the return programme, are still outstanding and would appear to require more urgent attention from the Commission.

43. The often-postponed Conference on the Reconstruction and Development of Croatia - the so-called donors' conference to focus attention on Croatia's longer-term development - was finally held in Zagreb on 4-5 December, with 47 countries and 27 international organizations participating. According to local media, the Government was dissatisfied with the donations that the conference produced, while the European Union reiterated its concern on democratization issues.

44. The Office for Displaced Persons and Refugees has recently estimated that around 1,000 asylum-seekers from Kosovo arrived in Croatia through Bosnia and Herzegovina, their first country of refuge. The Ministry of the Interior (MOI) reportedly confirmed, after meeting with international representatives, that border officials would be instructed to allow entry, on humanitarian grounds, to those seeking asylum in Croatia, in keeping with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, to which Croatia is a party by succession. According to the MOI, all applications for asylum will be dealt with on an individual basis. International representatives have met with the MOI to initiate a joint process for the drafting of a national law on asylum.

C. Administration of justice

45. The Special Rapporteur notes that there are some positive signs that the Croatian judiciary is trying to work more effectively and independently. However, there continue to be sporadic rulings which appear to reflect improper ethno-political factors in the judicial process. The appointment, discipline and dismissal of judges is conducted by the State Judicial Council, which operates under a law that has been criticized by international observers and which the Croatian Government is attempting to amend. The proposed amendments, which at this writing are still in parliamentary discussion, appear positive in that they aim to increase judicial efficiency, but this

improvement may come at the expense of greater control over the judiciary by the executive branch. The Special Rapporteur has learned that disciplinary proceedings concerning the former President of the Supreme Court, Krunislav Olujic, were marked by the Council's refusal of Dr. Olujic's request to introduce new evidence on his behalf, while the prosecution was allowed to introduce new incriminating evidence.

46. Many Croatian courts suffer from an enormous backlog of cases. The Special Rapporteur has learned from the latest report from the Minister of Justice that there are over 1 million unsolved cases. The Croatian Government has yet to introduce an effective solution of this difficult problem which, along with the court fees that place judicial remedy out of the reach of many Croatians, jeopardizes the public's faith in the judicial system as an effective remedy. Certain cases are settled with extraordinary speed while other cases remain unsolved for a disproportionate amount of time, both a reflection of external intrusions into the courts. It is with concern that the Special Rapporteur notes that some positions for judges remain unfilled and that judges are not provided with adequate staff and resources.

47. It has come to the Special Rapporteur's attention that some court decisions have not been adequately enforced. According to the Norwegian Refugee Council's Civil Rights Project, rulings regarding the return of property have at times remained unenforced for several years despite numerous court orders for eviction and subsequent orders to enforce the eviction. The Special Rapporteur is further concerned that the Magistrate Courts in the Danube Region exclude the public from all hearings. This exclusion stems from explicit instructions from the Supreme Court in Zagreb. Furthermore, judges work under the pressure of the Supreme Court President's order to not cooperate with international observers.

D. War crimes trials

48. As has frequently been noted, the adoption of the 1996 Amnesty Law was a positive step toward reconciliation. However, ambiguities and uncertainties with regard to the law's application continue to exist. In the meantime, a number of cases regarding war crimes remain unresolved. According to a list of the Government of Croatia dated 14 September 1998, a total of 61 persons are currently imprisoned on charges of war crimes. In addition, according to information received by the Special Rapporteur, an unknown number of people have been either convicted *in absentia* or indicted. This has created a general atmosphere of uncertainty among the Serb community, and is an inhibiting factor in the return of Serbs to Croatia.

49. Some progress has been made in the case of the so-called Sodolovci group, a group of 19 individuals from the village of Sodolovci, charged on 30 August 1994 with crimes against humanity and humanitarian law violations against the civilian population and convicted *in absentia* on 25 May 1995. During the second half of 1998, a number of important developments in this case occurred, namely the arrest and subsequent release of three members of this group. On 20 July, the Supreme Court accepted the appeal lodged by eight members of the group - including the three individuals arrested - against the decision of the Osijek County Court of 21 May rejecting their requests for retrial. The Supreme Court annulled the decision and returned the case to the

first instance court for reconsideration and a new decision on retrial. The appeal of two members of the group was rejected on the basis that they resided in the FRY.

50. One important issue in this case had been the question whether there would be a possibility to waive the custodial requirement while the retrial was in process, which the group had been promised previously in an agreement between the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) and the Government of Croatia. After a decision of the County Court of Osijek on 31 August, the three individuals were released and allowed to remain at liberty while standing trial. On 7 September, another of the eight mentioned above surrendered to the police and was released on 11 September, and will also be granted retrial without being subject to detention. According to one source, an additional number of the remaining members of the Sodolovci group have stated their willingness to stand trial before a Croatian Court if given the same treatment as the four individuals noted above. The main hearing in this case began on 10 September during which the three accused pleaded not guilty. It was adjourned without specification of the date for the next hearing.

51. In the ongoing trial of another member of the Sodolovci group, Goran Vusurovic - whose case was described in detail in the Special Rapporteur's report to the General Assembly (A/53/322) - a hearing scheduled to take place from 1-3 September was cancelled due to the absence of a ballistics expert in Zagreb. As of this writing no new date for the next hearing has been announced.

52. Regarding the case of Milos Horvat - discussed in detail in a previous report of the Special Rapporteur (E/CN.4/1998/14, paras. 60-61) - who was sentenced on 25 June 1997 to five years in prison on charges of genocide, the Supreme Court considered his case on 16 December 1998. At the time of writing, the decision had not yet been announced.

53. Sixteen prisoners are currently detained in Split prison, in accordance with three different verdicts. All allege that after their arrest they were mistreated or tortured by police officials for the purpose of obtaining information and/or confessions. Statements claimed by defendants to have been extracted under torture or ill-treatment were not removed from the record but were admitted as evidence. Both international and local trial observers and lawyers noted deficiencies in the application of international standards of fair trial, such as the presumption of innocence, and lack of evidence of the alleged act, and thus the failure on the part of the Court to prove the alleged offence of war crimes as stated in the indictments.

54. The first of the above noted indictments concerns 39 persons convicted by the Split County Court in May 1997 for artillery and other weapons attacks against civilian targets, for forcing a mass exodus of civilians, and for looting and burning property and otherwise terrorizing civilians during the war. They were found guilty of violating article 120, paragraphs 1 and 2, as well as article 122 of the Criminal Code of the Republic of Croatia for mass killings and material damage and received sentences of between 5 and 20 years in prison. Twenty-seven of the prisoners were tried <u>in absentia</u>, while 10 are currently in Split County Prison and two have been transferred to Lepoglava

Penitentiary. The court found all indictees collectively guilty for criminal acts based on their individual responsibility in contributing to a planned criminal plot. Their appeals with the Supreme Court have been pending since the issuance of the verdict.

55. One individual among the group, Petar Bjelobrk, was subject to three indictments. He had been in the United Nations Confidence Restoration Operation (UNCRO) camp in Knin and was handed over by the United Nations to the Croatian authorities. According to information received by the Special Rapporteur, when Mr. Bjelobrk was first taken from the camp, he was indicted - in accordance with article 120 of the Croatian Criminal Code - on charges of murder and raping old women. After the charges were reportedly dropped, he was recharged with armed rebellion under article 235 of the Criminal Code. However, he was allegedly not amnestied as were the other 38 persons of a group of 39 handed over by the United Nations to the Croatian authorities, because it was held that he, as a reserve officer, was an organizer and thus more responsible for the armed rebellion. He was subsequently charged with mining the Peruca dam and sentenced to 14 years' imprisonment. According to information received by the Special Rapporteur, an expert in explosives testified on Mr. Bjelobrk's behalf, noting that it would have been impossible for him to have committed the alleged act.

56. Another eight persons, known as the Stikovo group, were convicted of having committed war crimes, under article 120, paragraph 1, of the Croatian Criminal Code. Five among the group have been detained in Split prison since August 1995. The remaining three have been convicted in absentia. The charge against them was based on the fact that from August 1991 to August 1995, the group had been organized as a Stikovo platoon of the army of the so-called Republic of Serb Krajina. Their trial, held in Split County Court, did not begin until March 1998, and lasted three months. Most have been convicted to between 12 and 20 years' imprisonment. According to a number of observers the trial fell short of international standards of fair trial with, for instance, the Court allegedly having failed to establish individual guilt for the crimes listed in the indictment. Their appeals have since been pending with the Supreme Court.

E. Freedom of expression and information

57. A key issue concerning the media in Croatia continues to be the situation of HRT (Croatian Radio and TV), its role in political and public life, and the difficulties in attempts to widen and democratize HRT management and subsequently programming. The proposed new act on HRT, based on suggestions by international organizations, resulted in another protest by opposition MPs. One draft was debated in the House of Representatives on 18 October. Following the official conclusion of the discussion, the ruling party added two amendments, one of which granted seats on HRT's council to expatriate Croatians. Many opposition members deemed this procedure illegal, and boycotted in protest. The suggestions of the Council of Europe's media experts, particularly in regard to the composition of the management, have so far been overlooked. Recommendations by the international community included provisions concerning representation on the HRT Council and procedures for the appointments of the managing director and the supervisory board.

58. The Special Rapporteur notes that there have been allegations of interference by the Croatian secret service in the work of some newspapers, including illegal tapping of telephones, especially those of journalists. These serious allegations have not been adequately investigated by the Government.

59. The Croatian media continues to work under the restriction of a law which has resulted in over 400 lawsuits against journalists for "emotional anguish" which allegedly results from their articles. Furthermore, journalists can, and in several cases, do face criminal prosecution for defamation of the President of the Republic, the Prime Minister, the Supreme Court President, the Speaker of Parliament and the President of the Constitutional Court.

F. Missing and detained persons

60. To date, the Government of the Republic of Croatia lists 1,824 persons as officially missing in the 1991-1992 conflict, and approximately 800 missing since the 1995 army operations "Flash" and "Storm". The majority of the missing are Croats, and the official list also includes Serbs, Muslims and nationals of Hungary, Russia, Albania, Slovenia, the Czech Republic, Ukraine, Germany, Romania, Argentina, Austria, Italy, the former Yugoslav Republic of Macedonia and France.

61. Between September 1995 and December 1998, a total of 2,850 bodies were exhumed from both individual and mass graves, and 2,134 bodies identified, according to information provided to OHCHR in Zagreb by the Commission for Detained and Missing Persons (hereinafter, the Government Commission). In 1998, 33 mass graves were opened, 30 of them in the Danube region - including the New Cemetery in Vukovar - one in the county of Karlovac and two in the county of Sisak-Moslavina, with a total of 1,145 bodies exhumed, of which 718 were positively identified. The mass grave in the New Cemetery in Vukovar, exhumed between 28 April and 26 June this year, is the largest in Europe since the 1939-1945 war. Of the 938 bodies exhumed from this cemetery, 622 had been identified by early December. Overseeing the exhumation process are experts from the Ministries of the Interior, Defence, Health and Justice, and of the Government Commission. Also present are representatives of the European Community Monitoring Mission (ECMM) and the International Criminal Tribunal for the Former Yugoslavia (ICTY).

62. Discussions at the 38th meeting of the Croatian Government Commission and its FRY counterpart in Belgrade on 28-29 October reportedly included discussions over the handing over by the FRY of some 300 protocols of Croatians who were killed and buried in the FRY in 1991-1992, in exchange for the 669 protocols already submitted by Croatia. The Government of Croatia maintains that the Granic-Jovanovic Agreement announced in August, outlining details for the release from Croatian and FRY prisons of illegally detained prisoners-of-war on an "all for all" principle, should be respected in its entirety. The Special Rapporteur, however, notes that the FRY Commission stated at the meeting that the implementation of this Agreement was not within its jurisdiction but came under the Ministry of Justice. Consequently, the meeting was unable to establish any criteria for the exchange of prisoners.

G. Liberty and security of the person

63. As reported by the OSCE Police Monitoring Group, there was a recent decrease in the number of reported incidents of ethnically motivated intimidation in the Danube region, a fact that it ascribes to the steady exodus of Serb residents. It is also reported that the nature of the incidents has shifted from being predominantly housing-related to being overwhelmingly non-housing-related.

64. The Special Rapporteur is concerned that, according to the Joint Council of Municipalities in Vukovar, of the 56,138 Serbs domiciled in the Danube region in 1995, 27,178 have since left the region. The fact that many are emigrating to the FRY, with few economic prospects, leads the Special Rapporteur to express his concern that factors such as the lack of personal safety and the slow process of reconciliation are among the major causes of the continuing departure of Serbs from Croatia.

H. Labour rights

65. It is with concern that the Special Rapporteur notes that over 100,000 workers in Croatia continue to suffer from late payment of wages - at times delayed for two years - reduced wages or no wages at all. The Croatian government has not yet established an effective remedy for this situation. Strikes on this issue have been banned by the Supreme Court, a decision that leaves workers with the judiciary as their only remedy. However, because of the slow speed of the courts and the frequency with which companies declare bankruptcy before paying court-ordered arrears, workers do not find this an adequate solution. In certain State-owned companies in the Danube region, management disclaims responsibility for paying wages, the result - apparently - of a privatization process that lacks transparency. Compounding the problem of non-payment, the Ministry of Labour and Social Welfare's labour inspectors are not provided with adequate resources to be an effective investigative mechanism to enforce the payment of wages.

66. Union shop stewards, the trade union representatives within companies, work under special protection of article 182 of the Croatian Labour Law. In practice, however, there are cases of harassment. Several cases of shop steward harassment are pending in court and these decisions and their enforcement will reflect the degree of protection that shop stewards are actually afforded, a protection which the Special Rapporteur notes as one of the cornerstones of union rights. One union leader, Bozica Jurec, has appealed for the third time her conviction (and prison sentence) for allegedly slandering an employer in statements which appear to fall well within the expected work of a trade unionist. This case has also been marked by decisions being delivered within days, a speed which indicates that the court could be operating under external pressure. This decision could effectively silence this union leader and the difficulties which this lawsuit has created for Ms. Jurec has, the Special Rapporteur fears, served as a threat to the freedom of expression and the work of unionists.

67. Several articles from a 1996 Agreement between the Government and two trade union confederations have not been enacted. The Special Rapporteur would like to draw attention to two important and unenforced clauses of this

Agreement: clause No. 8, which guarantees that labour-related cases be handled within one year; and No. 9, which orders that the government calculate a Croatian "consumer basket", a monetary amount with which a four-member family could procure food, clothes and shelter, and which, when calculated, should be used to establish a reasonable minimum wage.

I. Gender issues

68. In September 1998 the Special Rapporteur began monitoring the situation of gender rights in the Republic of Croatia. He commends the praiseworthy national policy for the promotion of equality to be implemented by the State Commission on Issues of Equality established in May 1996, in compliance with the Convention on the Elimination of All Forms of Discrimination against Women.

69. The new Criminal Code, which came into force in 1998, contains provisions that seem inadequate to protect certain rights of women. Specifically, provisions referring to the prosecution of cases of domestic violence, as prescribed in article 102, paragraph 2, of the Code, for the criminal act of inflicting physical injury, and for the criminal act of rape (art. 188, para. 5), state that when perpetrated within the family (except against children) or among partners, these acts will be prosecuted only following a motion by the victim; the former Criminal Code provided for ex officio prosecution for the same crimes. Under the new law neither physicians nor the police are legally obliged to report severe physical injury to the State Attorney. The Special Rapporteur acknowledges that this law protects the privacy of victims, but he expresses serious concern regarding these changes. They could, in effect, increase the number of unprosecuted acts of domestic violence which, reportedly, are on the rise in Croatia.

70. One case of reported sexual harassment in the workplace occurred in Split in August. A female doctor and five female patients and employees of the Split Clinic Hospital accused the Chief of the Orthopaedics Department of sexually harassing and intimidating as well as blackmailing them by threatening to transfer them to lesser-paid jobs, forbidding them from performing operations and preventing them from receiving promotions. The doctor and her colleagues reported the case to the Commission on Medical Ethics and the Croatian Physicians' Assembly, which then conducted an investigation and concluded in its report that there was a grave violation of the code of medical ethics. The case is currently at the Court of Honour of the Croatian Physicians' Assembly which is to issue a penalty. It raises concern, however, that no preventive action has been taken by the hospital's management.

71. The Special Rapporteur voices concern over the unequal representation in the country's public, political and economic life that women face. Women's participation in the national parliament and in regional and municipal political structures has dropped significantly since 1990, a trend that was confirmed in the 1997 elections.

J. Conclusions and recommendations

72. The Special Rapporteur continues to express his concern at the uneven and slow progress of returns, and at reports of the inefficacy of the Housing Commissions, the essential element in the return programme. With regard to the return process, the Special Rapporteur recommends that the question of tenancy rights be addressed by the Croatian Government, as has been done by Bosnia and Herzegovina, in order to foster the return of Serbs to their former homes in urban areas, and that the Government provide all Housing Commissions with alternative accommodations for equitable distribution. The Special Rapporteur urges the Government to undertake reconstruction and economic revitalization projects which directly benefit all ethnicities. Furthermore, the Special Rapporteur recommends that the National Committee for Reconciliation create concrete projects and measures to benefit all citizens of Croatia.

73. The Special Rapporteur recommends that the Croatian government begin to provide sufficient resources to the judiciary as well as to fill all empty posts, in order to alleviate the burden of unresolved cases. He welcomes educational programmes for new Croatian judges. Delays in - and lack of enforcement of - court rulings should be of primary concern to the Croatian Government, and the Special Rapporteur recommends that steps be taken to guarantee the execution of court orders.

74. The Special Rapporteur notes with concern the attitude of certain court officials toward international observers as well as the general public. He urges that all court proceedings be opened to the public, in accordance with Croatian law, and that international observers be granted full cooperation.

75. Perpetrators of war crimes must be brought to justice. However, at present, the process of prosecuting perpetrators of war crimes is not conducted in accordance with international standards. As the above cases show, there have been serious shortcomings in the trials of persons convicted for war crimes, such as a lack of credible evidence. Some trials have been ongoing for several years, and the appeals with the Supreme Court have been subject to unreasonable delays. On the other hand, violations of human rights committed during or in the wake of operation "Storm" in 1995, documented by the Special Rapporteur in previous reports (see A/50/727) have never been adequately addressed by the Government. The prompt resolution of outstanding issues relating to war crimes is crucial for reconciliation and democratization to take place.

76. The Special Rapporteur wishes to express his concern at the ruling party's domination of the media and urges the Government to adopt the necessary measures to ensure that public broadcasting can fulfil a public interest mandate and is independent of political or financial interests. With regard to defamation suits, due attention should be given to the importance of free political debate in a democratic society and to the fact that public figures must expect to tolerate a greater degree of criticism than private individuals.

77. The Special Rapporteur notes that labour-related cases require prompt resolution, preferably by courts which specialize in such issues, as dictated

by the November 1996 agreement with trade union confederations. Furthermore, the Special Rapporteur recommends that the labour inspection force of the Ministry of Labour and Social Welfare be granted adequate funds so that it can investigate widespread instances of non-payment or late payment of wages.

78. The Special Rapporteur encourages the State Commission on Issues of Equality and women's non-governmental organizations to continue strengthening their cooperation and to work closely on the full implementation of the national policy on the promotion of equality. The Special Rapporteur encourages specific affirmative action, such as the introduction of a quota system, for improving women's representation in decision-making and political positions in the country's public life.

III. FEDERAL REPUBLIC OF YUGOSLAVIA

A. Introduction

79. Since his appointment in late March 1998 through this writing, the Special Rapporteur has conducted three comprehensive field missions to the Federal Republic of Yugoslavia (FRY): (1) from 5-8 April 1998; (2) from 10-21 September 1998; and (3) from 21-29 October 1998. He submitted a letter on his first visit (E/CN.4/1998/164) to the Chairman of the Commission on Human Rights, whose statement of 24 March 1998, requesting that the Special Rapporteur undertake a mission, had focused on concern over developments in the province of Kosovo. During his first mission, the Special Rapporteur visited Belgrade and Pristina. On his second visit, he travelled through Montenegro, Sandzak and Kosovo and raised countrywide issues such as the administration of justice, freedom of expression, and the rights of persons belonging to minority groups. Shortly after the 13 October accord between FRY President Slobodan Milosevic and United States envoy Richard Holbrooke and the 16 October agreement with the Organization for Security and Cooperation in Europe (OSCE) which created the Kosovo Verification Mission, the Special Rapporteur returned to the FRY. During this visit, he focused on rapidly evolving developments in Kosovo and on the situation of media in Serbia, in the wake of government restrictions on independent newspapers and broadcast media.

B. Steps to provide current information

80. The Special Rapporteur stresses that given the pace of developments in the FRY, particularly the volatile situation in Kosovo, it is likely that elements of this report will have been superseded by other events before the document is published. Therefore, he will take extra steps to provide the Commission on Human Rights with timely analysis and information. He takes the opportunity of this report to describe ongoing concerns and matters that require further examination. The Special Rapporteur also notes certain developments in the situation of human rights in the FRY that hold promise for the future.

C. Sources of information

81. This report is based on information from a variety of sources. It takes into account materials provided by the Ministry of Foreign Affairs of the FRY,

including aides-memoire and correspondence with the Special Rapporteur and the Office of the High Commissioner for Human Rights (OHCHR). It is based on first-hand observations, as well as on discussions with government officials, community leaders, refugees and displaced persons, intergovernmental and non-governmental organizations (NGOs), legal professionals, and representatives of official and independent media. It draws in particular on court documents and correspondence with the Serbian Ministry of Justice and the Montenegrin Ministry of Justice. The Special Rapporteur regrets, however, that at this writing the Serbian Ministry of Internal Affairs has neither responded to inquiries nor provided information promised during the Special Rapporteur's discussion with the republican minister on 6 April 1998. The information requested concerns not only the increasing use of the Ministry of Internal Affairs' public grievance procedure, described by the minister to the Special Rapporteur, but also reports of torture and ill-treatment of specified individuals in police custody.

D. Relations with the FRY

82. The Special Rapporteur and OHCHR have enjoyed the cooperation and support of the Government of the FRY and the republican governments of Serbia and Montenegro in carrying out the visits that form the basis of this report. In November, the Federal Republic of Yugoslavia (FRY) and OHCHR concluded a status agreement. The agreement, the first of its kind in any of the countries on the territory of the former Yugoslavia, provides for nationwide human rights protection and promotion. The Special Rapporteur welcomes in particular the initiative by the office of the President of Serbia and the Serbian Ministry of Justice to consult with OHCHR in resolution of pending concerns regarding the administration of justice. He appreciates the efforts undertaken by the government of Montenegro, in particular its President, Prime Minister and ministries of justice, information, and minority affairs, to facilitate the work of OHCHR.

E. Kosovo

83. The ongoing crisis in the province of Kosovo has dominated international attention to the situation of human rights in the FRY, and the Special Rapporteur has devoted special attention to its nature and consequences. He stresses that the crisis in Kosovo is not new or isolated. The immediate crisis of politics, diplomacy and human rights engendered by the violence in Kosovo is based on long-standing systemic causes within the FRY which, if not addressed throughout the country, threaten national and regional security.

84. Though violence in Kosovo decreased since the Special Rapporteur's October mission, no political agreement had been reached by late 1998 to implement the general framework set out in the 13 October accord. Representatives of an enlarged Kosovo Diplomatic Observer Mission (KDOM) continued to monitor events and, at this writing, the OSCE announced that the Kosovo Verification Mission (KVM), which had deployed its advance team, was to begin operations in mid-January 1999. In this environment, violations of human rights that had characterized the crisis in Kosovo for many months were continuing to occur. Violations threatening security of the person continued unchecked in detention and arbitrary detention. There were new allegations and reports of summary execution. Other serious violations assumed a pattern

of attack and retaliation resembling events in February, March and early April 1998. Violations were attributed to Serbian security forces, the Kosovo Liberation Army and armed persons representing paramilitary groups and village defence units.

85. Accurate information about the statistical scope of conflict in Kosovo has been difficult to obtain. The elusive nature of the numbers has affected events on the ground and attempts to defuse them. New and often conflicting numbers of persons killed, wounded, abducted, arrested and alleged missing, as well as those displaced from the areas of conflict or returning to the region, have appeared every day. The numbers in any category cannot be exhaustively confirmed, and security considerations have often prevented access to areas of concern. After the 16 June "Moscow declaration", diplomatic missions accredited in the FRY increased their presence in Kosovo. Diplomatic monitors concentrated on patrolling conflict areas and gathering general information on the scope and nature of armed activity, but have had no single mandate and no specific human rights monitoring responsibilities. At this writing, the OSCE verification mission was defining an understanding of the "human dimension" of the 16 October agreement, to include democratization and the organization and conduct of elections. As a result, specialized information from intergovernmental sources on the situation of human rights in Kosovo was coming principally from United Nations field presences.

86. In his letter of 8 April, the Special Rapporteur focused on human rights concerns related to operations carried out by the Serbian Ministry of Internal Affairs in the Drenica region during late February and March 1998 and to the activity of armed Kosovo Albanians during that same period. In the following months, the increased intensity of armed hostilities between government forces and armed groups of the "Kosovo Liberation Army" (KLA) and gross violations attributed to all sides lessened only in October after days of negotiations under threat of NATO intervention. In the first week of December, violence reached its highest level since the 13 October accord. After a long period of sustained armed confrontation along fluid front lines, the nature of the conflict had returned to a stage of isolated attacks and retaliations, dramatically illustrated by cases of abduction, arbitrary detention, and reports of summary executions. Testimonies gathered by the Special Rapporteur in the field suggest that, throughout the conflict, government forces have used excessive force, including deliberate destruction of property, leading to extensive civilian casualties. Concerns raised in the Special Rapporteur's 8 April letter, as well as in his report to the fifty-third session of the General Assembly, remain unaddressed.

87. Recent months have been marked by more discoveries of concentrations of corpses and evidence of massacres, including the massacre of civilians. Serbian authorities announced that, on 27 August, in the village of Klecka, they discovered in a makeshift crematorium what they believed to be the remains of civilians abducted and then killed by the KLA. The exact number, identity, age, and sex of the persons who died at Klecka has yet to be determined. Shortly after the discovery of the Klecka site, the remains of at least 39 persons were discovered in nearby Glodjane where exhumation was continuing at year's end. On 29 September, the badly mutilated bodies of 14 Kosovo Albanians, including six women, six children and two elderly men, were found in a forest near Gornje Obrinje in the Drenica region. There are

reports that on 26 September 1998 another 14 Kosovo Albanian men were killed in Golubovac, near Gornje Obrinje. In early October, police discovered the remains of four persons, believed to have been abducted by the KLA, in a pit close to the copper mine in Volujak near Klina. Two more bodies were found on 4 October near Gremnik, and returning displaced persons continue to report coming upon human remains.

88. As a result of efforts by the European Union and other international organizations, including OHCHR and ICTY, and the Government of the FRY, some progress has been made in initiating independent investigations into these alleged arbitrary killings. On 20 October, a team of experts from the Institute of Forensic Medicine at Helsinki University arrived in Belgrade, following clarification of the experts' terms of reference in contacts between the Finnish and FRY ministries for foreign affairs. The team has authorization from government authorities to investigate grave sites in Glodjane, Golubovac, Gornje Obrinje, Volujak, Klecka and Orahovac; it began work at Gornje Obrinje on 10 December. Information gathered by the team will be shared with the Serbian Government and the European Union. The team has also been asked by both Kosovo Albanian and Serb non-governmental sources to investigate perhaps as many as a dozen other sites. Despite official authorization, the team has encountered delays and obstacles in its cooperation with authorities and found its investigations complicated by ongoing Serbian forensic examinations in certain cases. Preliminary examinations, as well as contemporary media reports and first-hand observations, suggest that some sites have been tampered with, compromising and complicating forensic investigation. Considering the nature of these crimes, the Special Rapporteur stresses the importance of full cooperation with the International Criminal Tribunal for the Former Yugoslavia.

89. The Special Rapporteur remains concerned about the fate of the Serb, Kosovo Albanian and Roma civilians and Serbian police officers abducted by armed Kosovo Albanians, believed to be KLA. He has appealed directly for their release. Efforts continue to determine whether any newly discovered grave sites contain the remains of those believed abducted. According to information received from the FRY authorities, as of 7 December 1998, 282 civilians and police had been abducted by Kosovo Albanians. Of these, the fate and whereabouts of 136 persons were still unknown; others were released, escaped, or had been identified as killed.

90. Information on the activity of Kosovo Albanian paramilitary "tribunals" has become public since the 13 October accord. The activity of the "tribunals" suggests a pattern of arbitrary arrest. On 30 October, two Kosovo Albanian activists associated with the Democratic League of Kosovo were arrested by the KLA in Malisevo and placed under interrogation before being released on 1 December. A KLA communiqué also acknowledged that two additional individuals had been executed. On 31 October, according to a communiqué, the KLA arrested three men and killed a fourth near Podujevo for "alleged criminal activity". On 1 November, a KLA "military court" sentenced two abducted Tanjug journalists to 60 days of detention for having committed violations of KLA regulations, respectively "the military police book of regulations, chapter VIII, item 5, page 27". Representatives of international agencies, including ICRC and OHCHR, were not allowed to visit the abductees who were released to the KVM after 41 days of arbitrary detention. On

9 November, in Srbica, KLA forces abducted the third and fourth Serb civilians taken since mid-October. Family members of the victims and villagers from Leposavic organized the arbitrary detention of roughly 25 Kosovo Albanian passengers from an intercity bus. All of them were released on 11 and 12 November in exchange for the two abducted Serbs. On 17 November, near Podujevo, KLA members abducted a Serbian police officer. On 23 November, the KLA issued a communiqué stating that it had "arrested" the police officer and other Albanian "collaborators". On 24 November, through the actions of the United States element of the Kosovo Diplomatic Observer Mission, the officer was released. The Special Rapporteur denounces these abductions as grave violations of basic principles of international human rights and humanitarian law.

91. The Serbian Ministry of Justice has confirmed to the Special Rapporteur that more than 1,500 persons, including 500 in absentia, are currently being investigated under suspicion of involvement in anti-State activities and in activities of the KLA. The number of persons in actual custody is difficult to obtain, as "custody" includes persons in pre-arraignment police detention, under the auspices of the Ministry of Interior and in investigative or post-sentencing detention, under the auspices of the Ministry of Justice. Serbian security officials in Kosovo have arrested and held in police detention large numbers of individuals for periods ranging from several hours to several days. The routine police "screening" of male returnees, however, had abated in the aftermath of the 13 October accord. Persons in police detention are routinely held incommunicado, without access to attorneys, longer than the three-plus-one days of pre-arraignment detention allowed by law. Their families are not informed of their arrest or of their release from police detention. The number of persons subsequently arraigned and held in investigative detention is unclear, as the ICRC is not routinely and regularly informed of arraignments by the Ministry of Justice. As a result, the Special Rapporteur can only estimate, as have the Serbian Minister of Justice and defence attorneys, that from 1,500 to 1,900 cases were pending in late 1998 on charges related to terrorism, anti-State activity or aiding and abetting such activity. This does not include persons in police detention or persons called for "informative talks" by the police, whose number is absolutely unknown and whose names are known only anecdotally or when reported on a case-by-case basis by NGOs or family members.

92. The Special Rapporteur notes that, two months after the 13 October accord, implementation of the last two points of the accord, which concern prosecution in State courts, remained unclear. The Serbian Minister of Justice had sent teams of prosecutors to district courts in Kosovo to examine individual cases, and court officials confirmed to the Special Rapporteur that they had participated in working sessions with representatives of the Serbian Ministry of Justice and the office of the President of Serbia. The Ministry of Justice, together with the federal Ministry for Foreign Affairs and the office of the President of Serbia, have solicited OHCHR's cooperation in resolution of individual cases and categories of cases pending in Kosovo to which OHCHR or the Special Rapporteur have drawn particular attention. These efforts resulted in the release of several individuals from pre-trial detention and/or pending appeal. Those released include some medical and humanitarian workers and juveniles on whose behalf the Special Rapporteur had appealed. New arrests, trials, and sentencing continued. The Special

Rapporteur and OHCHR continue to raise individual cases of alleged human rights violations of detainees and, in early December alone, submitted to the Serbian Ministry of Justice over 50 requests for clarification of alleged violations regarding persons in Ministry custody, including elderly and infirm detainees.

93. Arrests, trials and sentencing are most numerous in the districts of Prizren and Pec, in which the bulk of armed activity has occurred and where a total of approximately 1,350 cases were pending at the end of the year, far exceeding the number of cases in the courts of Kosovska Mitrovica, Pristina, Prokuplje and Gnjilane combined. The district court in Prizren, which had been holding trials related to allegations of terrorism and anti-State activity on a regular daily basis, suspended trials from 31 October through 9 November so that, according to the court president, case review could be conducted. The district court in Pec, however, continued to hold up to four trials a day, except when weather or security conditions prevented transport of defendants to court. At this writing, the Special Rapporteur had recorded 92 completed decisions of courts of first instance throughout Kosovo, but that figure was by no means comprehensive and only included court documents at hand. Of that number, nearly all decisions had been convictions, with only eight acquittals. Sentences ranged from 60 days to 13 years, with the majority of sentences from two to five years. For sentences of less than five years, until they have been confirmed by a court of final instance, detention is not mandatory during the appeals process, but most so sentenced have been detained nonetheless.

94. The Special Rapporteur is alarmed at consistent disregard by Serbian State security forces of both domestic and international standards pertaining to police conduct and treatment of detainees, illustrated by a growing number of cases of arbitrary detention and systematic ill-treatment, abuse and torture, including five deaths in custody. Throughout Serbia, persons are arbitrarily detained by the police for questioning or held in pre-trial detention longer than the period mandated by law. Their families are not informed of their arrest or of their release from police detention. Lawyers report that they experience serious difficulties in gaining access to their clients and are generally not allowed to consult their clients in private. In practice, pre-trial detainees in police (investigative) and court (post-arraignment) custody are not permitted access to their own physicians, but only to official physicians provided by the police or court. Official physicians do not report injuries sustained by detainees during police interrogations, even when those injuries are obvious, and do not provide adequate medical treatment. These serious violations occur when persons are held in pre-arraignment custody under the auspices of the Ministry of the Interior, or in investigative detention and after court sentencing under the auspices of the Ministry of Justice. In his discussions with the Serbian Minister of Justice, the Serbian Minister of the Interior, and the FRY Foreign Minister, the Special Rapporteur strongly emphasized the urgent need to end impunity for security officials and others responsible for human rights abuses.

95. As an illustrative example of arbitrary process by police and judicial officials, disregard for the rule of law and violation of domestic and international standards, the Special Rapporteur notes the case of attorney

Destan Rukiqi, arrested in his office in Pristina on 23 July. The same day Rukiqi was arrested, he was tried and sentenced to the maximum 60 days in prison for "disturbing public order". The Serbian Ministry of Internal Affairs brought charges against Rukiqi based on an investigative judge's claim that Rukiqi had insulted her by saying she had behaved like a policeman. Rukiqi made the remark after the judge had denied him his right as a defence attorney, guaranteed under the Law on Criminal Procedure, to unconditional review of court files relating to a client. Six days after sentencing, Rukiqi was taken to hospital suffering from kidney injuries allegedly inflicted in the Pristina prison. Rukiqi was finally transferred to the prison hospital in Belgrade, where he stayed till 22 August when he was released by a decision of the Supreme Court of Serbia overturning the sentence on procedural grounds. The court did not enter into the merits of Rukiqi's arrest, conviction, or treatment during detention, but argued that the maximum sentence was unmerited. The Special Rapporteur has spoken with the hospital administrator of the Belgrade prison hospital and with Rukiqi himself; both attested to Rukiqi's medical condition on arrival in Belgrade and adequate medical treatment provided him in the Belgrade prison hospital.

96. The Special Rapporteur is concerned at widespread abuse of the investigative procedure of "informative talks", which has amounted to harassment of targeted or vulnerable populations and individuals. Summons to such talks can by law be issued only in the event of criminal conduct or to gather direct information on criminal activity under investigation.

F. Restrictions on free expression

97. In October 1998, the Serbian Parliament adopted a Law on Public Information, which has limited the scope of media coverage and effectively restricted available information within the Republic and in the country as a whole. The law forbids transmitting or delayed re-transmitting of radio and television broadcasts of " a political-propaganda nature ... from foreign broadcast organizations founded by foreign governments". It prevents the publication of material that "calls for the forced overthrow of the constitutional order, jeopardizes the territorial integrity of the Republic of Serbia and the Federal Republic of Yugoslavia". Charges under the law on public information are brought and heard in the Serbian Court of Petty Offences, an administrative - not judicial - tribunal, whose officials are Government appointees with limited tenure. The law's expedited notice, hearing, and sentence procedures contravene existing law on petty offences. Execution of a first-degree court decision is not suspended or postponed during the appeal process. The law specifies that fines levied must be paid within 24 hours. Finally, it requires that the defendant prove that alleged damages that are the subject of the proceeding against him were not caused by his own negligence, which appears to undermine the principle of presumption of innocence.

98. Since adoption of the law, four independent newspapers, Danas, Dnevni Telegraf, Nasa Borba and Evropljanin, and two radio stations, Radio Senta and Radio Index, have ceased activities in Serbia proper. On 23 October the Belgrade court of petty offences fined the weekly publication Evropljanin roughly US$ 230,000. The Special Rapporteur was physically present when, executing garnishment orders late at night, court bailiffs and police removed

furniture and equipment of the publication. Some print media have been re-registered in Montenegro, from which they are distributed in Serbia. Nevertheless, the information law was recently applied against the independent Montenegrin weekly Monitor, which was fined 2.8 million dinars and has at this writing been seized three times by police officials in searches of Montenegro-Serbia transport. Moreover, in the Monitor case, the Court of Petty Offences determined that legal and appropriate notice was served by broadcasting the summons over Radio Jugoslavija at 19.55, 20.55 and 21.55 hours for the defendants to appear in Belgrade at 10.00 the next morning.

99. In early December, having determined that statements had been made to justify State action under the law, the Court of Petty Offences in Nis brought charges against independent TV Nis for broadcasting allegedly slanderous statements by an opposition party member against members of the ruling Socialist Party of Serbia. When the ruling party members withdrew their complaint, the court - which had already determined sufficient cause for prosecution - also withdrew from prosecution. On 25 November, the Serbian Ministry of Information indicated that the Albanian-language media were not privileged and that the law would be implemented on the entire territory of Serbia.

G. Restrictions on academic freedoms

100. The Law on Universities adopted in May 1998 by the Serbian Parliament directed that all university employees were obliged to sign new employment contracts by 5 August. Many refused to do so, protesting that the law was an attack on the autonomy of the university. Since then, new dismissal, suspension and transfer notes have been issued in Serbia to university employees, among whom are some of the FRY's most eminent academics of international distinction. However, these arbitrary measures have been directed mainly at the protest movement which is strongest among the Law, Philology and the Electrical Engineering faculties. The dean of the Electrical Engineering Faculty announced that he intended to punish faculty members who accept research grants from the U.S.-based Open Society Fund or "similar organizations". The freedom of movement within faculty premises has been restricted. Outside the entrance to the "research centre", a secretary has been stationed, with a telephone, and has been instructed to note staff absences. The dean hired private security personnel to prevent rebellious teachers from entering classrooms. Several teachers have been physically removed. To protest the ban on lecturing by certain professors, some students at those faculties are boycotting lectures and asking for the dismissal of deans.

101. During October and November, developments at the Faculty of Electrical Engineering led to street protests, hourly strikes every day and lecturing outside faculty buildings. Two students from the Faculty of Electrical Engineering and one from the Law Faculty were banned and at year's end were waiting for disciplinary procedures to take place. On 8 December, some 1,000 students of the three faculties took part in a protest march in the Belgrade city centre. The staff unions of the Faculty of Electrical Engineering launched a general strike appeal that was due to begin on 12 December and expressed their support to the student resistance movement "Otpor". The staff unions and other associations brought a constitutional challenge to the Law on

Universities; but after months, the only response from the Constitutional Court was notice that the court referred the challenge to the Serbian Government for comment.

H. Sandzak

102. In recent months, the situation in Sandzak has been largely overshadowed by events in Kosovo. In September 1998, the Special Rapporteur visited Novi Pazar, where he was briefed on the specific problems of the region by local human rights advocates. All interlocutors pointed to the social and economic consequences of the Kosovo crisis for the local communities, which have received large numbers of displaced persons from Kosovo. Ethnic tensions were also rising and there were concerns about a revival of anti-Islamic sentiments both locally and in the national Serbian and Yugoslav media. Government measures, such as the imposition of mandatory rule in Novi Pazar in July 1997, have further contributed to an atmosphere of mistrust and fear, which in turn has led a growing number of Sandzak Muslims to leave the region for Bosnia and Herzegovina and western Europe. The Special Rapporteur believes that an important step towards rebuilding confidence in Sandzak would be for the Serbian and Yugoslav authorities to investigate the atrocities that took place in the region during the war years 1992-1994. The abductions of mainly Muslim civilians in Strpci, Mioce, Bukovica, Sjeverin and other places in 1992 and 1993 have not been properly investigated and the families of the victims have received no compensation for the suffering and losses they endured. The Special Rapporteur notes that the war crimes trial of N. Ranisavljevic for violations related to abductions and killings in Strpci, which was originally scheduled to resume in September 1998, had still not been re-scheduled by the Bijelo Polje court at year's end.

I. Montenegro

103. In Montenegro, the Special Rapporteur met in September 1998 with the President of the Republic, the Prime Minister and other members of the Government. In Ulcinj and Rozaje, he was briefed by local officials about the situation of internally displaced persons and the economic and social consequences of the Kosovo crisis in these municipalities. Refugees and internally displaced persons made up 12 per cent of the total population of Montenegro. On 11 September, the Montenegrin government decided that it was no longer in a position to admit internally displaced persons from Kosovo. About 3,000 internally displaced persons were turned back at the border at Plav and directed across the Albanian border. In the immediate wake of this decision, government officials explained to the Special Rapporteur that resources were exhausted and a continued influx could pose a threat to the internal security of the Republic. The Special Rapporteur urges Montenegrin authorities to devise a solution to meet the educational needs of internally displaced schoolage children who, in some communities, outnumber the resident children and who, having attended "parallel" schools in Kosovo, cannot be easily integrated into the State educational system.

104. The Special Rapporteur notes that continuation of court proceedings in Danilovgrad on behalf of the Roma community, whose homes were destroyed in riots in April 1995, had not resumed, despite pledges from Montenegrin authorities that the proceedings would resume in summer 1998. He has also

received reports of ill-treatment of persons in police custody, denial of appropriate medical care to persons in police custody and, in particular, beatings at the time of arrest.

J. Refugees and the Internally-Displaced

105. Since the Special Rapporteur's mission, the latest refugees to the FRY have concentrated in Vojvodina and around Belgrade. They join the conservatively estimated 500,000 refugees from Croatia and Bosnia and Herzegovina already in the FRY. The number may well be higher, increased by the silent, steady flow of Serb refugees from Croatia during the past two years. Most refugees have found shelter in larger towns with relatives or friends; others are sheltered in collective centres throughout the country, including in Kosovo. Many have not been registered with authorities or have registered only those individual family members, usually children or the elderly, whom they deem to be in the most extreme need. Many have not applied to domestic or international humanitarian organizations, which have admitted to the Special Rapporteur and OHCHR that their stores are exhausted and their donors fatigued.

106. In addition, an estimated 175,000 persons remained internally displaced by the crisis in Kosovo at year's end. Some 75,000, meanwhile, had returned to their villages where they were living in very precarious conditions whether in their partially destroyed homes or with neighbours. It was, however, believed that none of these persons were living in the open anymore. The Special Rapporteur warns that the task of supporting over 700,000 persons in need - a significant portion of whom cannot return to their homes destroyed in fighting - cannot be sustained by the already-overtaxed aid structure in the FRY. They represent a far-reaching regional catastrophe in the making.

107. Concerning persons of declared or attributed Serb ethnicity, the Special Rapporteur notes that political documents, agreements with intergovernmental organizations, and administrative programmes issued in Croatia on citizenship documentation procedures and return have directly or indirectly focused on the situation of displaced persons inside Croatia. Little attention has been paid to the return of non-Croat refugees and, specifically, of refugees from Croatia now living in the FRY. The Special Rapporteur welcomed the April 1998 bilateral protocol to the Agreement on Normalization between Croatia and the FRY, which began to address the complexities of refugee return. He joins the international and domestic human rights advocates who have praised the bilateral Agreement on Legal Assistance in Civil and Criminal Matters. He notes, however, that by requiring that persons travel to their municipality to apply for return of property, as per the Croatian political document issued in June 1998, the "Programme for the Return and Accommodation of Expelled Persons, Refugees and Displaced Persons", effectively forecloses the participation of persons outside Croatia without travel documents.

108. The Special Rapporteur raises issues related to Croatian Government practices in this section because many thousands of persons wishing to return or travel to Croatia live in the FRY. Monitored every day by OHCHR staff, hundreds of persons begin before dawn to queue in front of the Croatian embassy in Belgrade, seeking travel documents, return applications, citizenship documents, and the registry documents required to prove

citizenship eligibility. Many come from "split" families in which some members have obtained Croatian citizenship documents, but others have been denied or after many months have received no answer to applications or appeals. Citizens of Croatia resident in the FRY, "split" families, and refugees who have yet to obtain their Croatian citizenship documents express the desire to visit relatives, arrange property transactions, check on the state of their holdings, or simply to travel to their home country. Appointments with consular officials requested in June 1998 were being scheduled for December. As part of the normalization process, the Yugoslav and Croatian Governments agreed to open two additional consulates in each country, and progress has been made toward that end. The Special Rapporteur stresses that the return of refugees and the acquisition of citizenship documents are served by governments opening consulates and offices, inside and outside their borders, where persons can apply for and receive all relevant documents. In all the countries of his mandate, he has observed a great need for such offices.

K. Conclusions and Recommendations

109. The Special Rapporteur observes that challenges facing the FRY are similar to those faced by the other countries of his mandate: to build a system based on rule of law instead of on a ruling party, to foster an independent judiciary, to implement in daily practice international standards and constitutional protections, to create functional units of self-government and local administration, to promote democracy and pluralism, to support freedom of broadcast and print media, to transform economic and social systems so as concurrently to create opportunity and protect the vulnerable, and to heal the wounds of war. At this writing, the FRY faces additional challenges, and the situation of human rights in the country is grave. Without addressing here the causes of the current crisis in Kosovo - to which a political solution is to be implemented - the Special Rapporteur emphasizes that threats to life and security of the person are the most serious violations of human rights. Every loss of life is a tragedy, regardless of the profession, ethnic identification, or other categorization of the victim. Every act of violence ultimately affects a society's ability to cope with the challenges described above.

110. The Special Rapporteur is unable to assess the effect of the Kosovo crisis abroad, particularly on the situation of asylum-seekers and refugees from the Republic of Albania and the territory of the former Socialist Federal Republic of Yugoslavia in the countries where they now reside. Accordingly, he suggests that the effect of those communities on the crisis in Kosovo, and the effect of the crisis on them, deserve attention.

111. Forensic investigations by an independent team of experts should be conducted at Likosane, Cirez, Prekaz, Glodjane, Golubovac, Gornje Obrinje, Volujak, Klecka, Orahovac and other locations to determine whether arbitrary, summary or extra-judicial executions occurred.

112. Should sufficient evidence exist to warrant criminal investigations as a result of investigation of police conduct, police officers should be subject not only to internal disciplinary measures, but to investigatory procedure

applicable to all citizens. Criminal charges, as necessary, should be brought by the State prosecutor, and cases should be brought swiftly to trial held in regular, open session.

113. Full and unhindered access by the ICTY to carry out its mandate throughout the FRY should be assured.

114. Human rights and rights under domestic law should be respected for those persons in detention. Persons arrested should be allowed immediately to contact their families, to inform them of their arrest, and to have access to legal aid. They should be allowed access on demand, regardless of whether they are in police detention or court custody, to their own physicians, not just to physicians provided by the police or court. All allegations of torture should be rigorously investigated, evidence found to have been obtained through torture should be disallowed, and perpetrators of torture should be prosecuted and punished.

115. Police should strive to treat maximum periods after arrest specified by domestic law as maximum limits. Domestic law allows the police to hold an individual 24 hours to determine identity and 72 hours before arraignment before an investigative judge. Reports indicate that these maximum limits are frequently the norm - not the exception - for preliminary police custody.

116. Kosovo paramilitary units should immediately release all abductees, without preconditions.

117. The parliament of Serbia should repeal the Law on Public Information.

118. The Governments of Bosnia and Herzegovina, Croatia, and FRY should implement a harmonized regional citizenship regime, including appropriate provision for dual/multiple citizenship, to resolve the problem of citizenship, avoid de facto statelessness, and promote return of refugees.

119. Regional approaches to property rights, creating uniform regulations on protection of property and property transactions, should be established.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/43
15 February 1999

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in Burundi

Note by the secretariat

1. In its resolution 1998/82, entitled "Situation of human rights in Burundi", the Commission on Human Rights requested the Special Rapporteur to submit an interim report on the situation of human rights in Burundi to the General Assembly at its fifty-third session and a report to the Commission at its fifty-fifth session.

2. Owing to a serious car accident in which he was involved during his fifth mission to Burundi on 31 August 1998, the Special Rapporteur will present only an oral update on the development of the human rights situation in Burundi since his last visit, thereby supplementing the report submitted to the General Assembly at its fifty-third session (A/53/490), which will be made available to member States and participants at the fifty-fifth session of the Commission on Human Rights.

GE.99-10968 (E)

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/44
21 December 1998

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Human rights and unilateral coercive measures

Report of the Secretary-General

Introduction

1. This report is submitted pursuant to Commission on Human Rights resolution 1998/11 of 9 April 1998, in which the Commission requested the Secretary-General to bring the resolution to the attention of all Member States and seek their views and information on the implications and negative effects of unilateral coercive measures on their populations, and to submit a report thereon to the Commission on Human Rights at its fifty-fifth session.

2. In accordance with paragraph 8 (b) of the resolution, the Secretary-General, in a note verbale dated 6 August 1998, invited Member States to transmit information relevant to the subject-matter.

3. As at 1 December 1998, a reply had been received from the Government of Colombia. The reply of the Government of Colombia is summarized in the present document; any additional replies will be submitted in an addendum.

Colombia

[6 November 1998]
[Original: Spanish]

The Colombian State has expressed its complete rejection of unilateral coercive measures in various international forums. The Government of Colombia takes this opportunity to reiterate its opposition to the use of such measures, which it considers to be violations of the principles of international law governing relations between States and resulting in serious violations of fundamental human rights.

The negative impact of unilateral coercive measures in the fields of international relations, trade, investment and cooperation is beyond doubt. In this respect, the Eleventh Summit of Heads of State and Government of the Río Group (Asunción, 23 and 24 August 1997) adopted a declaration in which, inter alia, the heads of State and Government rejected such measures, expressed their intention to strengthen their positions to that effect in regional and international forums and emphasized the importance of strengthening multilateralism and international cooperation.

Colombia has also given its full backing to the appeal of the World Conference on Human Rights, held in Vienna in 1993, to the effect that States should refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of all human rights.

- - - - -

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/44/Add.1
27 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Implications and negative effects of unilateral coercive measures

Report of the Secretary-General

Addendum

GE.99-10398 (E)

Reply received from the Islamic Republic of Iran

[27 December 1998]
[Original: English]

1. "The Islamic Republic of Iran believes in the necessity of the development and enhancement of friendly relations among nations, and the achievement of cooperation in solving problems of an economic, social or political character, as stressed in the Charter of the United Nations, and therefore considers the promulgation and application of unilateral coercive measures as a matter that contravenes the principle of the non-extraterritoriality of domestic law, infringes State sovereignty and violates the right of people to self-determination and the right to development which is a universal and inalienable right and an integral part of fundamental human rights. Iran thus highly appreciates the continued consideration of this subject by the General Assembly, as well as by the Commission on Human Rights.

2. "The Vienna World Conference on Human Rights called upon States to refrain from any unilateral coercive measures not in accordance with international law and the Charter of the United Nations that create obstacles to trade relations among States and impede the full realization of human rights. Five years have elapsed since the achievement of that common commitment and the international community has not yet witnessed considerable progress in limiting and repealing such measures. Regretfully, international economic relations records indicate no sign of improvement in this area. Despite the recommendations adopted on this issue by the General Assembly, the Commission on Human Rights and major United Nations conferences, and contrary to general international law and the Charter of the United Nations, unilateral coercive measures of certain countries against other sovereign States continue to hamper free and natural economic and trade relations internationally, with all their extraterritorial effects, inter alia, on the economic and social development of targeted countries.

3. "Application of unilateral coercive measures not only is, by itself, a violation of human rights and undermines the enjoyment by people of the targeted States of their fundamental rights, but also increases the problems of those States in fulfilling their commitments under international human rights instruments. Cognizant of the fact that the implementation of treaty obligations is a multi-dimensional issue depending on the role played by both national and international actors, international confrontations can lead to the deterioration of human rights standards in the concerned countries, whereas international cooperation amongst nations can contribute to the improvement and promotion of human rights. This is specially true for economic and social rights, as well as collective rights.

4. "In examining the periodic reports of States parties on the implementation of the various human rights instruments, the respective treaty bodies should consider all the national and international factors and assess their impact on the implementation of treaty obligations in those States.

5. "The Islamic Republic of Iran believes that international monetary, economic and trade organizations, namely the Bretton Woods institutions, shoulder a grave responsibility in this matter and they can and should seek, find and apply ways and means to limit and dissuade any country from resorting to unilateral coercive measures.

6. "The Islamic Republic of Iran has been a targeted country of such measures for almost 20 years. Some unilateral coercive measures applied against Iran, as well as their adverse economic and social effects on the Iranian people, are reflected in the report (A/53/293) submitted by the Secretary-General of the United Nations to the General Assembly under the agenda item entitled 'Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms'.

7. "In its report to the General Assembly, the Islamic Republic of Iran enumerated several unilateral coercive measures taken by the United States of America, inter alia the enactment and implementation of the 'Iran and Lybia Sanctions Act of 1996 (D'Amato Act)'. In the period after that the United States of America not only have not taken any steps to repeal or invalidate such laws and measures, but also continued their hostile and arbitrary policy towards the Iranian nation.

8. "The unilateral coercive attitude, policy and measures of the United States should be stopped expeditiously by the collective efforts of all States and international organizations. Several relevant decisions and resolutions of the General Assembly and the Commission on Human Rights and other international bodies must enforce by appropriate follow-up arrangements through which different obstacles impeding the eradication of the unilateral coercive measures are identified and effectively obviated.

9. "Denouncing once again the promulgation of any unilateral coercive measures, the Islamic Republic of Iran calls upon the General Assembly and the Commission on Human Rights to continue the consideration of this issue in a more effective and practical manner, with the view to its prompt and full eradication."

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/44/Add.2
4 March 1999

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Human rights and unilateral coercive measures

Report of the Secretary-General

Addendum

Paraguay

[21 January 1999]
[Original: Spanish]

GE.99-11183 (E)

1. The Paraguayan legal system takes effect through the National Constitution, the international treaties and conventions ratified by our country, its laws, decrees and resolutions.

2. The National Constitution, promulgated in 1992, in its chapter entitled "International relations" in article 123, states that "In its international relations, the Republic of Paraguay accepts international law and endorses the following principles [...] 4/ international solidarity and cooperation; 5/ international protection of human rights." This is not merely a list; it represents a statement of policy, a fundamental option which should determine the State's action in its international relations.

3. By its international instruments, Paraguay undertakes to ensure due process for all those injured in their rights or fundamental freedoms. The promotion and protection of human rights and fundamental freedoms at national and international level must be universal and must be applied unconditionally throughout the world.

4. Paraguay's development policy is determined by regional economic integration, especially MERCOSUR.

5. The Rio Group was born of the political will of a group of countries wishing to find a peaceful solution to the Central American crisis of the 1980s, as well as to avoid foreign intervention in Central America and the internationalization of the conflict. It claims to be the first specifically Latin American forum for the discussion of matters of common concern to the peoples of Latin America and the Caribbean. Paraguay became pro tempore coordinator of the Group.

6. The increasing tendency among some countries to impose unilateral measures has been distorting international relations, so that the countries of the Rio Group have felt the need to call on the international community as a whole and in particular on multilateral organizations such as United Nations to take appropriate measures against that type of behaviour.

7. In order to discuss the issue of unilateral measures, the Rio Group's Working Group met in Asunción on 23 July 1997, in accordance with the mandate issued by the sixteenth Meeting of Foreign Ministers. The purpose of this meeting was to make proposals to the Heads of State for possible courses of action giving effect to the Rio Group's rejection of the unilateral and extraterritorial application of national laws, on the basis of considerations underlying the position of the Rio Group, more specifically its position in principle highlighting the undertaking to agree on the common aim to strengthen multilateralism, as agreed at the first summit of the Rio Group in 1987.

8. Possible courses of action were envisaged in three possible areas:

(a) To raise the issue at all regional summits, that is, at Spanish-American and hemisphere summits as well as in the Rio Group;

(b) To encourage discussion in all international forums, such as the United Nations or the World Trade Organization (WTO);

(c) To encourage further debate in regional and subregional parliaments and international parliamentary forums.

9. The Common Market of the Southern Cone (MERCOSUR) was founded with the Treaty of Asunción, signed in 1991 by Paraguay, Argentina, Brazil and Uruguay. Rather than laying down directly operational rules, this Treaty contains a set of general principles and programme objectives, giving guidelines for policies to be developed after its ratification.

10. Negotiations have been in progress to obtain the admission of MERCOSUR as a customs union with WTO. This involves renegotiating the consolidated lists, and the analysis and adjustment of agreements arrived at within the framework of WTO in relation to MERCOSUR arrangements, and in particular Paraguay's relations with WTO.

11. Paraguay took over the pro tempore presidency of MERCOSUR in January 1997, proposing that the other States parties should join it in promoting actions aimed at achieving full trade liberalization and creating genuine conditions of internal competition, strengthening the customs union, improving the common trade policy, furthering the progress and legal development of MERCOSUR institutions and aiming for closer relations with other countries or groups of countries.

12. The other members were urged to establish a more efficient system for the internalization and implementation of agreements and concensuses achieved, so as to facilitate and guarantee the effective implementation of the extended economic space, to proceed with the elimination of the numerous non-tariff restrictions which still remain and which hamper reciprocal trade, and to seek the harmonized implementation of measures adopted, such as technical, including health and plant health regulations.

13. With regard to the international agenda, the pro tempore President of MERCOSUR called for due attention to be paid to existing economic, political and strategic commitments, which should be analysed realistically and objectively in the light of potential costs and benefits which may be generated by either multilateral or bilateral negotiations.

14. Within the MERCOSUR bloc, Paraguay is highly dependent and its involvement entails both benefits and costs. Benefits for the country include improving its image, increasing its negotiating power, guaranteeing the process of democratization, exercising its power of veto in MERCOSUR negotiations, and reducing corruption, especially that arising from foreign trade.

15. On the cost side, we might mention the diminished qualification of a less developed country in relation to the Latin American Integration Association, less independent economic policy, the loss to the Government in terms of tariffs on imports from MERCOSUR countries, and increased unemployment in the short- and medium-term.

16. In protecting intellectual property rights, our country sought the fulfilment of commercial undertakings entered into with the United States of

America. Paraguay will not appear in Special Section 301 at any level until the beginning of 1999, neither will it be liable to trade sanctions.

17. Although issues such as piracy and counterfeiting still remain, the Government has made significant progress towards resolving them. Some of the key points of the settlement between the United States and Paraguay include institutional reforms to strengthen border controls, as well as the introduction of amendments to legislation to facilitate the effective prosecution of piracy and copyright infringements.

18. Paraguay has undertaken to adopt immediate measures against counterfeiters, as well as to coordinate anti-piracy action by the Customs Department, National Police and Ministry of the Economy. Progress has been made towards solving the problem, some positive results being the destruction of counterfeit products worth a great deal and the confiscation of illegally reproduced merchandise. The clear efforts made by the Paraguayan Government in the struggle against piracy are also reflected in the promulgation of a new Trademark Act and approval of the Act on Royalties and related rights.

19. At international level, our country is due to sign the Patent Cooperation Treaty, although alternative measures do exist to avoid the abuse of patents as well as monopolistic and anti-competitive commercial practices on the part of patent inventors. The Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS) authorizes States, under certain conditions and subject to certain limitations, to establish the system of compulsory and non-compulsory licensing.

20. It is important to draw attention to the negative effects of unilateral coercive measures, such as the commercial measures imposed by the Argentine Ministry of the Economy, which punishes the economy of neighbouring peoples and gives rise to forceful measures obstructing trade relationships. The bridge of San Roque González de Santacruz (Paraguayan) was closed by a crowded demonstration of tradespeople and authorities led by politicians, to protest against border trade restrictions imposed by the Argentine Government. The Argentines have done the same, taking forceful measures against their country's protectionist measures.

21. Our country does not erect barriers to the trade of any of its MERCOSUR partners and expects to be treated by them in a similar fashion.

22. Brazil should provide its partners with justification for some of the protectionist measures it has taken, such as reducing the importation of goods from Argentina, Paraguay and Uruguay, the other member States of MERCOSUR.

23. Furthermore, such actions give rise to retaliation, like the threat by Argentina to increase import duties on some Brazilian products, such as steel, on the grounds that they are subsidized.

24. Our country has complained that both Argentina and Brazil have restricted purchases of goods by their citizens in Paraguay. The irritating trade barriers which have been imposed systematically on our foreign trade by

Argentina and Brazil have forced Paraguay to submit a formal protest to the partners in the regional block on the occasion of the MERCOSUR summit held in Rio de Janeiro.

25. Among outstanding MERCOSUR issues, we might mention: the concern caused by the Argentine announcement that as from 1 February 1999 the purchasing limit of tourists visiting Paraguay will be lowered from US$ 150 to US$ 100. That move apparently led to the closing of the bridge San Roque González de Santacruz (Paraguayan) and at present the Argentine President, Carlos Saúl Menem, has temporarily suspended the decision. Restrictive measures of that kind deliberately discourage shopping tourism in Ciudad del Este and Encarnación (Paraguay).

26. Brazil imposes restrictions on our exports, to such an extent that at the last "Paraguayan Industrial Congress" the Paraguayan Government was urged to defend national interests against excessive trade protectionism by Brazil.

27. Despite its guarantees for the free movement of goods and services, MERCOSUR still suffers shortcomings with regard to equitable treatment between its members. There is an urgent need to develop an efficient mechanism for solving the problems arising from the implementation of non-tariff barriers on regional trade. The new channel for resolving intra-regional conflicts should work on the harmonization of plant health control systems.

28. Paraguay obtained the Hilton quota with the qualification of "high-quality meat producer", as well as the tariff reduction granted by the European Union's Generalized system of Preferences, which applies from 1996 to 1999.

29. International cooperation with multilateral organizations has been reflected in the Agreement on Cultural, Scientific and Technical Cooperation and the establishment of the first joint Paraguayan-French Commission, and in the agreement to abolish visas with France for all types of passports.

30. Other agreements signed in France relate to the Financial Protocol, allowing Paraguay access to soft credit, to extradition, judicial cooperation in rural matters and the transfer of convicted persons.

31. To its traditional concern to fulfil its international commitments, Paraguay has added another, which is to give priority to preventive diplomacy, with a view to avoiding the generation and spread of disputes and conflicts.

32. By Executive Power Decree No. 15.759/96, the Ministry of Integration was instructed to collate the National Digest of Norms, with a view to providing the country with an up-to-date database on national positive law.

33. The MERCOSUR Basic Dictionary and the Programme of Action 2000 were disseminated in the course of programmes and seminars organized for the purpose in order to develop a permanent link with products in international markets, emphasizing improvement in product quality. Short training courses on recent developments in MERCOSUR were provided for technicians to promote PROPARAGUAY investments.

34. A protocol proposed by Brazil on consultation and political agreement in MERCOSUR will be signed by representatives of the bloc countries, plus Chile and Bolivia, in response to the need for a consultation and political agreement mechanism to facilitate the operation of the political side of MERCOSUR.

35. The fifteenth MERCOSUR summit is currently being held in Rio de Janeiro, Brazil. A declaration of principles is due to be signed there concerning workers' rights entitled "MERCOSUR Labour Declaration", which will set out principles relating to individual and collective rights of employees, workers' migration and the elimination of forced labour. This declaration, which has been described by Brazilian diplomats as "a kind of supranational constitution", prohibits all forms of discrimination on grounds of race, religion or sex, renews guarantees to other rights, such as freedom of association and the right to strike, and urges governments to foster employment, and to protect and afford security to union workers.

36. Those responsible for drafting the declaration say that it will be the most useful political instrument available at present to enable trade unions in MERCOSUR to demand clear labour policies of their Governments.

- - - - -